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THE  
CHARTER  
AND  
ORDINANCES  
OF THE  
CITY OF BOSTON,

TOGETHER WITH THE  
ACTS OF THE LEGISLATURE RELATING TO THE CITY AND  
OTHER MUNICIPAL LAWS.

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PUBLISHED BY ORDER OF THE CITY COUNCIL.

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BOSTON:  
J. E. FARWELL & CO., PRINTERS TO THE CITY,  
No: 37 CONGRESS STREET.  
1864.



## CITY OF BOSTON.

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*In Common Council, June 21, 1860.*

ORDERED: That the Ordinances of the City together with such portions of the General Statutes and such special laws as affect the City of Boston, be prepared and printed under the direction of the Committee on Ordinances, upon the general plan of the volume of the Laws and Ordinances of 1856, the expense thereof to be charged to the appropriation for incidental expenses and miscellaneous claims.

Passed; sent up for concurrence.

J. P. BRADLEE, *President*.

*In Board of Aldermen, June 25, 1860.*

Concurred.

JONO. PRESTON, *Chairman pro tem*.

Approved June 26, 1860.

F. W. LINCOLN JR., *Mayor*.

*In Common Council, June 6, 1861.*

ORDERED: That the Committee on Ordinances cause the revision of the City Ordinances to be resumed and finished in accordance with the plan and directions of the City Council of 1860.

Passed; sent up for concurrence.

JOSEPH H. BRADLEY, *President*.

*In Board of Aldermen, June 10.*

Concurred.

SILAS PEIRCE, *Chairman*.

Approved June 17, 1861.

JOSEPH M. WIGHTMAN, *Mayor*.



## PREFACE TO THE EDITION OF 1850.<sup>1</sup>

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THE necessity of revising and printing the city ordinances has long been felt by the city council; and commissioners, appointed in previous years, for this purpose, have devoted more or less time to the subject. For reasons, however, which it is not necessary to state here, but little progress seems to have been made up to the present year. Meanwhile, the old collection of ordinances being out of print, and great inconvenience being occasioned by that fact, the city council, in February last, appointed a committee, with instructions to cause the revision and printing of all the city ordinances, with such other matter as they might deem expedient, and they were authorized to employ such assistance as might be necessary. The committee subsequently employed the city solicitor to rearrange, revise, and prepare for publication, the city ordinances, in such manner as he might deem for the interest of the city, with

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<sup>1</sup> Prepared by Hon. Peleg W. Chandler.

power to engage such assistance as he might need during the progress of the work.

In accordance with these votes the present volume has been prepared. It contains (1) a summary or digest of all the acts of the legislature relating to the city of Boston, and of such general laws as it seemed to be desirable to insert; (2) the ordinances of the city; and (3) such notes, references to judicial decisions, and such historical statements, as were deemed necessary and proper.

In regard to the legislative provisions, it has often been a difficult question to determine what acts of the legislature should be incorporated in the present volume. Of course, all the special laws now in force relating to the city should be inserted. As to the general laws, it was thought that no fixed rule could safely be adopted, but that each case should depend on a careful judgment, based upon all the facts and considerations affecting the case. Some statutes, although general in their form, are more particularly applicable to Boston than to any other part of the commonwealth. In others, there are specific duties to be performed in this city in a different manner from what they are required to be performed in other places; while there are other statutes so general and universal in their application, that it was thought best to insert them for that reason.

In this department of the work there has been much difficulty and embarrassment from the fact, that when

the General Laws of the commonwealth were revised in 1835, there were a large number of special acts relating to the city of Boston, growing out of its peculiar wants, condition, and circumstances, which were not expressly revised or repealed, and the Revised Statutes provided that this city should continue to have and exercise all the powers and privileges, and be subject to all the duties and liabilities, mentioned in the act establishing the city of Boston, and in the several acts especially relating to said city. At the same time, the Revised Statutes contain many general provisions upon the same subjects that are included in the special laws relating to the city of Boston, which obviously supersede and were intended to supersede the special provisions. The same fact is more obvious in many subsequent statutes, where the legislature have made general provisions, in effect extending special acts to all the towns in the commonwealth. Whether a general act is to be deemed an implied repeal of a special prior act, is of course a question depending upon a careful comparison of the two acts. In the present volume, the principles laid down in the case of *Brown v. City of Lowell*, 8 Metcalf's Rep. 172, have been adopted as the rule of action. No special act has been regarded as repealed by implication by a general act, unless the latter contained strong terms upon which to found such a conclusion, and even then, such notes and references have been made as will enable the reader easily to examine the point for himself.

It will be noticed that the statutes have not been inserted at length, but are presented rather in the form of a digested summary, although the language of the acts has been generally used. It would have been much less laborious to insert the various statutes in chronological order, without undertaking to state precisely what the law now is, but it is obvious that this would have left a labor, always embarrassing and sometimes very difficult, to be performed by every person who should consult the work, in order to ascertain the *present state of the law* on a given subject. The City Charter, for instance, has been amended so often and in so many different parts, that it is necessary to consult several different acts of the legislature to find out what the present chartered rights and duties of the city are. Much trouble is saved by presenting a digested summary of the law as it now stands, the various amendments being all incorporated, and the original altered so as to correspond with the subsequent statutes. This course has been attended with considerable labor and constant liability to error; but all the statutes are so constantly referred to in the margin, and the notes are so frequent, that the means of correcting any error are always near at hand.

It is hardly necessary to state in this connection, that this work is intended for *popular* rather than *professional* use; and members of the legal profession will not, of course, be content with any digest of the statutes, but will go to the originals, an examination of

which this work is not intended to supersede, although it is hoped that it may be of some use to them *in pointing the way*.

The ordinances contained in this volume have in general been recently revised and passed by the city council. When the committee was appointed, it was their understanding, and they had reason to know that it was the understanding of the city council, that the volume should be printed during the present year. It was not supposed that there would be time for anything like a general revision of the ordinances, which would necessarily require much labor, from the fact that there had been no general revision since 1833. But upon examination it was found that there were so many ordinances upon the same subjects; there had been so many alterations and amendments, repeals and partial repeals, that it was impossible to make any useful collection without revising and submitting many of the ordinances to the city council for its approval. This has been done with most of them, and in some instances important alterations have been made. In those instances where no alterations seemed necessary, the ordinances have been printed from the original records, with this difference, that where there are several on one subject, they are placed together and the sections numbered continuously as one ordinance; but in all cases the dates of the ordinances are given in the margin.

When it is considered that the plan of this revision

was not matured and the work itself was not actually commenced until the latter part of March last ; that all the general and special laws relating to the city have been collated and digested, with notes and references to the leading decisions ; that nearly all the old ordinances of the city have been revised ; and that several new and important ordinances have been made, it will not be denied, probably, that the work has been printed as soon as could reasonably be expected.

BOSTON, NOVEMBER, 1850.

## PREFACE TO THE EDITION OF 1856.<sup>1</sup>

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THE City Charter was revised in the year 1854, and the various modifications and changes made by that revision rendered a new revision of the city ordinances necessary. No ordinary exigency would have required a new or revised edition of the municipal laws to be issued thus early after so complete and perfect a revision had been made, as was made and published in 1850, by the learned and efficient city solicitor of that year, whose long experience in that office, and general familiarity with the municipal concerns and interests of Boston, peculiarly fitted him for such an undertaking. But the alterations in the fundamental law—the charter of the city—made corresponding alterations in the municipal laws indispensable.

The revised city charter was adopted at the November election in 1854, and very soon after its adoption it was found that the convenience of the citizens and the city officers required a new edition of the city ordinances to be published. The city council promptly made the necessary arrangements to provide for this want, and this volume has accordingly been prepared.

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<sup>1</sup> Prepared by A. K. P. Joy, F. L. Washburn, and Charles Mayo, Esquires.

It was not the design of this compilation to revise anew all the statutes relating to the city, since that labor was so well accomplished in the last edition. The object of this being simply to collate the laws of the state relating to the city, passed since the publication of the last edition in 1850, and all the municipal laws in force at this time, so modified as to conform to the provisions of the revised city charter.

In the preparation of this volume, it was not judged expedient or necessary to depart from the general plan of the last edition, although some of the titles contained in that have been extinguished by subsequent legislation, and new ones created, which are inserted in this. The general features of that edition therefore have been preserved in this, and the plan continued by incorporating the acts of the legislature relating to the city, and in some cases those of a more general nature, passed since 1850, and also all the ordinances in force at this time, whether passed before or since that date, in the same form as in the previous edition.

The revised city charter, in effect, modified or repealed many statutes relating to the city which had been passed previous to that revision, but notwithstanding this, where the statutes are cited at length, the language of the statutes has generally been preserved, and such notes and marginal references made as were necessary to call attention to the change.

BOSTON, JANUARY, 1856.

## PREFACE TO THIS EDITION.

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THE revision and consolidation of the General Statutes, published in 1860, so changed in many instances the phraseology of the Revised Statutes and of the legislative acts passed subsequently to the Revised Statutes, and in some cases so altered the substance of the laws, as to make a new edition of the "Laws and Ordinances" a necessity. An additional reason for a new volume was found in the fact that since the revision of 1856 the city council had enacted numerous new ordinances, and made such amendments and alterations in existing ones, that without a codification there would constantly be a difficulty in ascertaining the state of the law upon any point.

In the preparation of this volume, the general plan of the editions of 1850 and 1856 has been followed, it being excellent in itself, and one to which all have become accustomed. Subsequent legislation and the action of the city government have rendered advisable the addition of some titles and the omission of others. The new matter increased so much the bulk of the volume, that the committee on ordinances, under whose supervision the volume has been prepared, decided to omit the matter which was included in the Appendix to the former volumes, and to propose the publication of "a supplementary volume to embrace the rules and regulations of the different institutions and departments; \* \* \* various orders of a permanent character,

and some of the city contracts, which being periodically renewed it is convenient to have accessible to those who are responsible for their faithful performance. Several acts and resolves of the legislature, for temporary objects, will also be given. The volume will contain, in addition, an explanatory list of the special laws passed for the benefit of the city, as also of the cases decided in the Supreme Court upon points of municipal interest."<sup>1</sup> The references in this volume to a Supplement are to that proposed volume.

The same committee also recommend "that hereafter some settled policy be adopted whereby new ordinances shall be published apart from the Registers, the annual collections be bound each year together into volumes for the use of the City Government and of the public, with indexes extending back to the last preceding revision, and the pages numbered continuously for ease of reference. Thus will be preserved a complete series of our municipal laws of inestimable value to the City Council, in their subsequent deliberations. The revisions should be made after regular intervals, and judging of the future by the past, periods of ten years will not prove more frequent, than our constant experiments in legislation and the new provisions needed for the varying requirements of the City will render indispensable. It is only by the adoption of such a plan rigidly adhered to, that those who administer our by-laws, or who are to be governed by them, can ascertain without difficulty what is the established rule for their guidance."<sup>1</sup>

BOSTON, FEBRUARY, 1864.

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<sup>1</sup> City Doc. 1863, No. 99.

# CONTENTS.

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	Page.
CITY CHARTER . . . . .	1
CITY SEAL . . . . .	29
ACTIONS . . . . .	30
ALIEN PASSENGERS . . . . .	31
AMUSEMENTS . . . . .	32
ARMORIES . . . . .	33
AUCTIONEERS . . . . .	35
BOARD OF ACCOUNTS . . . . .	37
BOATS AND LIGHTERS . . . . .	37
BOARD OF CITY OFFICERS . . . . .	46
BOUNDARY LINES . . . . .	48
BOWLING ALLEYS AND BILLIARD TABLES . . . . .	62
BRIDGES . . . . .	66
BUILDINGS . . . . .	88
BURNING FLUIDS . . . . .	94
CARRIAGES . . . . .	95
CHELSEA . . . . .	109
CHIMNEYS AND CHIMNEY SWEEPERS . . . . .	112
COMMON AND PUBLIC SQUARES . . . . .	114
CONSTABLES . . . . .	122
CONTRACTS WITH CITY OFFICERS . . . . .	124
CONTRACTS AND EXPENDITURES . . . . .	126
COUNTY AND COUNTY OFFICERS . . . . .	127
COUNTY RECEIPTS AND EXPENDITURES . . . . .	135
COURTS . . . . .	136
CRIBERS . . . . .	142
DEEDS . . . . .	143
DOGS . . . . .	144
EAST BOSTON . . . . .	148
ELECTIONS . . . . .	150
QUALIFICATIONS OF ELECTORS . . . . .	150
CONDUCTING ELECTIONS AND RETURNING VOTES . . . . .	152

	Page.
ENGINEER.....	162
FANEUIL HALL.....	163
FANEUIL HALL MARKET.....	165
FENCES AND FENCE VIEWERS.....	176
FERRIES.....	182
FIELD DRIVERS, POUNDS, AND IMPOUNDING OF CATTLE.....	190
FINANCE.....	195
FIRE.....	201
FIRE-ARMS, BONFIRES, AND BRICKKILNS.....	227
FUEL.....	228
GUNPOWDER.....	229
HARBOR.....	239
HAWKERS AND PEDLERS.....	277
HAY AND HAY SCALES.....	282
HEALTH.....	286
HISTORY.....	323
HOSPITALS.....	324
CITY HOSPITAL.....	324
LUNATIC HOSPITAL.....	329
HOUSES OF CORRECTION AND JAILS.....	336
HOUSE OF INDUSTRY.....	372
HOUSE OF REFORMATION.....	376
INTELLIGENCE OFFICES.....	381
JURIES.....	383
LAMPS.....	390
LEATHER.....	391
LIBRARY.....	393
LICENSED HOUSES.....	398
LIME AND LIME CASKS.....	401
LUMBER.....	403
MARBLE, SOAPSTONE, AND FREESTONE.....	404
MEAL, GRAIN, AND BREAD.....	406
MESSENGER.....	408
MILK.....	409
MOUNT HOPE CEMETERY.....	411
NOTICES AND PLACARDS.....	418
NUISANCES.....	419
OFFICERS AND OFFICE HOURS.....	420
ORDINANCES AND BY-LAWS.....	423
OVERSEERS OF THE POOR.....	427
PAUPERS.....	433
PAWNBROKERS.....	460
POLICE.....	462
PORTERS.....	471
PRINTING.....	473

# CONTENTS.

xvii

	Page.
PUBLIC BUILDINGS.....	474
PUBLIC LANDS.....	480
RAILROADS—STEAM .....	484
RAILROADS—HORSE .....	497
CAMBRIDGE HORSE RAILROAD .....	518
DORCHESTER RAILWAY.....	539
EAST BOSTON WHARF COMPANY'S RAILROAD .....	553
LYNN AND BOSTON HORSE RAILROAD .....	555
METROPOLITAN HORSE RAILROAD .....	558
MIDDLESEX HORSE RAILROAD.....	575
SUFFOLK HORSE RAILROAD .....	586
WINNISIMMET HORSE RAILROAD.....	618
REGISTRY AND RETURNS OF BIRTHS, MARRIAGES, AND DEATHS,	620
REWARDS .....	625
RIOTS.....	626
SCHOOLS.....	631
SECOND-HAND ARTICLES.....	650
SEWERS AND DRAINS.....	653
SOLICITOR .....	664
STATE AID.....	666
STAVES AND HOOPS.....	678
STEAM ENGINES, FURNACES, AND BOILERS.....	679
STREETS.....	683
TAXES. ....	723
ASSESSMENT OF TAXES .....	725
COLLECTION OF TAXES.....	748
TRUANTS.....	769
WARDS.....	772
WATER.....	779
WEIGHTS AND MEASURES.....	808
WELLS AND PUMPS.....	819
WITNESSES .....	820
WOOD, BARK, AND COAL.....	821
ADOPTION OF REVISED ORDINANCES.....	827
OF RULES AND REGULATIONS.....	829
ADDENDA.....	830
SUFFOLK RAILROAD.....	830
MIDDLESEX RAILROAD .....	831
INDEX .....	835



THE CITY CHARTER,  
ORDINANCES,  
AND  
STATUTES RELATING TO THE CITY OF BOSTON.

## ERRATA.

- On page 34, in foot note, before "post," insert 746.
- On page 52, seventh line from bottom, for "parrallel" read parallel.
- On page 121, side note to § 7, after "to" insert be.
- On page 196, § 2, side note, for "1855" read 1825.
- On page 198, in first side note, *dele* "January 12, 1855."
- On page 234, in first side note, for "1853" read 1833.
- On page 238, in first side note, for "S. G." read G. S.
- On page 241, in foot note, third line, for "201" read 301.
- On page 246, in side note to § 11, for "239" read 229.
- On page 268, first side note, for "Dorchefter" read Dorchester.
- On page 395, at bottom. The limitation upon the expenditures on the public library to the sum of ten thousand dollars in any one year after January 1, 1853, was repealed by Stat. 1857, ch. 11.
- On page 528, in sixth line from top, for "!" read ;.
- On page 544, in foot note, after "Dorchester," insert July 26.
- On page 560, in foot note, for "517" read 563.
- On page 626, in side note to § 2, for "70" read 170.
- On page 658, in side note to § 1, for "1844" read 1841.

# CITY OF BOSTON.

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## CITY CHARTER.<sup>1</sup>

### SECTION

1. Corporate powers.
2. City Government.
3. Division into twelve wards.
4. Annual meeting for the election of city officers.
5. Certificates of election to be furnished.
6. Commencement of municipal year.
7. Election of ward officers.
8. Ward officers to be sworn.
9. Non-election of ward officers.
10. Absence of ward officers.
11. Power and duty of warden.
12. Duties of ward clerk.
13. Duties of warden and inspectors.
14. Duties of ward officers at all elections.
15. Election of mayor.
16. Board of aldermen to examine returns of votes for mayor.

### SECTION

17. Proceedings in case of no choice of mayor before the commencement of the municipal year.
18. Proceedings in case no mayor is chosen, or a full board of aldermen is not elected.
19. Election of aldermen.
20. Election of common councilmen.
- 21, 22, 23. Proceedings in case of no choice of common councilmen.
24. Board of aldermen, &c., to judge of elections.
25. Vacancies in city or ward offices.
26. Removal of city or ward officers from their wards.
27. Organization of city council and oath of office.
28. Absence of mayor elect.
29. Aldermen to choose a permanent chairman.

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<sup>1</sup> The first act of the legislature of Massachusetts establishing the city of Boston, was passed February 23, 1822, and adopted by the citizens of Boston, March 4, 1822. It is chapter 110 of the acts of 1821, and can be found in the Supplement to this volume. The present City Charter, being a revision of the former one, was passed April 29, 1854, and adopted by the citizens, November 13, 1854. It is chapter 448 of the acts of 1854.

SECT.	SECT.
30. City clerk.	53, 54. The school committee.
31. Vacancy in office of city clerk.	55. Organization of school committee. Secretary and subordinate officers.
32. Absence of city clerk.	56. Powers and duties of school committee.
33. Powers and duties of board of aldermen.	57. Qualifications of voters at municipal elections.
34. Common council a separate body. President and clerk. Sittings to be public. Quorum.	58. Board of aldermen to make lists of voters prior to every election. Inspectors to allow no one to vote whose name is not on the list.
35. Powers of city council. By-laws, ordinances, &c.	59. Elections of national and state officers. Examination and return of votes. Certificates. Separate lists of votes for governor, &c., to be transmitted to the secretary of state or the sheriff. Votes for electors of President, &c., how and when to be transmitted to the secretary. Proceedings in case representatives are not chosen. Proceedings in case of no election of representatives to Congress.
36. Assessment of taxes.	60. General meetings of the citizens.
37. Collection of taxes. Assessors to be chosen. Bonds may be required of all who collect, keep, or disburse public moneys.	61. Warrants for meetings to be issued by board of aldermen.
38. City council may provide for the appointment of city officers, and may choose register of deeds, when, &c.	62. Power of legislature to alter the charter.
39. Care and custody of city property. Power to purchase property.	63. Repeal of inconsistent acts. Proviso.
40. Board of health.	64. Repeal not to revive other acts.
41. Surveyors of highways.	65. Act to be void unless adopted by the citizens. If adopted, when to take effect.
42. City treasurer.	
43. Members of city council ineligible to other offices.	
44. Representatives to general court.	
45. Compensation of the mayor.	
46. Powers and duties of mayor.	
47, 48. Veto power of mayor.	
49. Mayor to appoint officers by consent of aldermen. Power of removal.	
50. Vacancy in office of mayor.	
51. Accountability of all boards and officers for public money. Annual financial statement.	
52. Election of overseers of the poor. Their powers and duties.	

Corporate  
powers.  
1821, 110, § 1.

SECTION 1. The inhabitants of the City of Boston, for all the purposes for which towns and cities are by law incorporated in this Commonwealth, shall continue to be one body politic in fact and in name, under the style and denomination of the City of Boston,

and as such shall have, exercise, and enjoy all the rights, immunities, powers, and privileges, and shall be subject to all the duties and obligations now incumbent upon and appertaining to said city as a municipal corporation.

SECT. 2. The administration of all the fiscal, prudential, and municipal concerns of said city, with the conduct and government thereof, shall be vested in one principal officer to be styled the Mayor, one council of twelve persons to be called the Board of Aldermen, and one council of forty-eight persons to be called the Common Council, which boards in their joint capacity shall be denominated the City Council, and also in such other boards of officers as are hereinafter specified.

City Govern-  
ment.  
1821, 110, § 1.

SECT. 3. It shall be the duty of the City Council, and they are empowered during the year 1860, and whenever thereafterwards they may deem it expedient, not oftener than once in ten years, to cause a new division of the city to be made into twelve wards, in such manner as to include an equal number of voters in each ward, as nearly as conveniently may be, consistently with well-defined limits to each ward; and until such division be made, the boundary lines of the wards shall remain as now established.<sup>1</sup>

Division into  
twelve wards.  
1821, 110, § 2.  
1850, 167, § 1.  
G. S. 8, § 5.  
G. S. 19, §§ 4, 5,  
16.

1857, 309, § 2.

SECT. 4. The annual meeting of citizens for the election of municipal officers hereinafter mentioned,

Annual meet-  
ing for the

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<sup>1</sup> The Gen. Stats. c. 8, § 5, provide that "no new divisions of wards shall be made in the city of Boston previous to the next apportionment of senators and representatives." Chap. 19, § 16, is to the same effect. The next apportionment will not be before 1865. See Constitution of Mass. Amend., Arts 21, 22.

election of city officers.  
1824, 49, § 1.

G. S. ch. 7.

shall be held on the second Monday of December; and the citizens of said city, qualified to vote in city affairs, shall, for the purpose of such election, then meet together within the wards in which they respectively reside, at such hour and place as the board of aldermen may by their warrant direct and appoint, and the person receiving the highest number of votes for any office shall be deemed and declared to be elected to such office; and whenever two or more persons are to be elected to the same office, the several persons, to the number required to be chosen, having the highest number of votes, shall be declared elected.

Certificates of election to be furnished.

SECT. 5. Every person so chosen in any ward shall, within forty-eight hours of his election, be furnished by the clerk with a certificate thereof, signed by the warden, clerk, and a majority of the inspectors, which certificate shall be presumptive evidence of the title of such person to the office therein mentioned.

Commencement of municipal year.  
1824, 49, § 2.

SECT. 6. The municipal officers to be chosen at the annual election shall enter upon the duties of their respective offices on the first Monday of January.

Election of ward officers.  
1821, 110, § 3.

SECT. 7. The qualified voters of said city shall, at the annual meeting, choose by ballot one warden and one clerk and five inspectors of elections for each ward, who shall be resident in said ward, and who shall hold their offices for one year, and until others shall be chosen and qualified in their stead.

Ward officers to be sworn.  
1821, 110, § 3.

SECT. 8. The ward officers mentioned in the preceding section shall respectively make oath faithfully and impartially to discharge their several duties, which

oath may be administered by the clerk of such ward to the warden, and by the latter to the clerk and inspectors, or to all of said officers, by any justice of the peace for the county of Suffolk; and a certificate thereof shall be entered in the record to be kept by the clerk of the ward.

SECT. 9. In case of the non-election of any ward officer at the annual meeting, adjournments may be had for the purpose of effecting such election, in the same manner as is hereinafter provided with regard to the election of members of the common council.

Non-election of ward officers.

SECT. 10. In case of the absence of any ward officer at any ward meeting, such officer may be chosen *pro tempore* by hand vote, and shall have all the powers and be subject to all the duties of the regular officer at such meeting.

Absence of ward officers.  
1821, 110, § 3.  
G. S. 19, § 9.

SECT. 11. It shall be the duty of the warden to preside at all ward meetings, with the powers of moderators of town meetings. In case of his absence, the clerk, and in case of the absence of the clerk, any inspector shall preside, according to seniority, until a warden shall be chosen as provided in the preceding section

Power and duty of warden.  
1863, 144.

SECT. 12. It shall be the duty of the clerk to make a fair and true record, and to keep an exact journal of all the acts and votes of citizens at the ward meetings, and to deliver over such records and journals, together with other documents and papers held by him in his said capacity, to his successor in office.

Duties of ward clerk.  
1821, 110, § 3.  
1863, 144.

Duties of  
warden and in-  
spectors.  
1821, 110, § 3.  
1863, 144.

SECT. 13. It shall be the duty of the warden and inspectors of each ward to receive, sort, and count, and of the warden to declare, all votes at any election within such ward.

Duties of ward  
officers at all  
elections.  
G. S. 19, § 9.  
1863, 144.

SECT. 14. It shall be the duty of all ward officers authorized to preside and act at elections of city officers to attend and perform their respective duties, at the times and places appointed for elections of any officers, whether of the United States, State, City, or Wards, and to make and sign the regular returns of the same.

Election of  
mayor.  
1821, 110, § 5.

SECT. 15. The qualified voters of said city shall, at the annual meeting, be called upon to give in their votes for one able and discreet person, being an inhabitant of the city, to be mayor of said city for the term of one year. All the ballots so given in, in each ward, being sorted, counted, and declared, shall be recorded at large by the clerk in open ward meeting; and in making such declaration and record, the whole number of votes or ballots given in shall be distinctly stated, together with the name of every person voted for, and the number of votes given for each person respectively; such numbers to be expressed in words at length; and a transcript of such record certified and authenticated by the warden, clerk, and a majority of the inspectors of elections for each ward, shall forthwith be transmitted or delivered by such ward clerk to the clerk of the city. It shall be the duty of the city clerk forthwith to enter such returns, or a plain and intelligible abstract of them, as they are successively received, upon the journal of the proceedings of the board of aldermen, or some other book to be kept for that purpose.

SECT. 16. The board of aldermen shall, as soon as conveniently may be, within three days of such election, meet together and examine all the said returns, and they shall cause the person who may have been elected mayor, to be notified in writing of his election; but if it shall appear by said returns that no person has been elected, or if the person elected shall refuse to accept the office, the board shall issue their warrants for a new election, and the same proceedings shall be had, as are provided in the preceding section for the choice of a mayor, and repeated from time to time, until a mayor shall be chosen.

Board of aldermen to examine returns of votes for mayor.  
1821, 110, § 5.  
1830, 7, § 2.

SECT. 17. Whenever, on examination by the board of aldermen of the returns of votes given for mayor at the meetings of the wards holden for the purpose of electing that officer, last preceding the first Monday of January, in each year, no person shall appear to be chosen, the board of aldermen, by whom such examination is made, shall make a record of that fact, an attested copy of which record it shall be the duty of the city clerk to produce and read, on the first Monday of January, in the presence of the members returned to serve as aldermen and common councilmen; and the oaths prescribed by law may be administered to the members elect. The members of the board of aldermen shall thereupon proceed to elect a chairman, and the common council a president, in their respective chambers, and being respectively organized they shall proceed to business in the manner hereinafter provided, in case of the absence of the mayor; and the board of aldermen shall forthwith issue their warrants for meetings of the citizens of the respective wards, for the choice of a mayor, at such time and place as they

Proceedings in case of no choice of mayor before the commencement of the municipal year.  
1830, 7, § 1.

shall judge most convenient; and the same proceedings shall be had, in all respects, as are hereinbefore directed, and shall be repeated from time to time, until a mayor shall be duly chosen.

Proceedings in case no mayor is chosen, or a full board of aldermen is not elected.

1821, 110, § 5.

G. S. 19, §§ 6, 7, 8.

SECT. 18. Whenever it shall appear, by the regular returns of the elections of city officers, that a mayor has not been chosen, or that a full board of aldermen has not been elected, such of the board of aldermen, whether they constitute a quorum or not, as may have been chosen, shall issue their warrant in the usual form, for the election of a mayor, or such members of the board of aldermen as may be necessary, and the same proceedings shall be had and repeated, until the election of a mayor and aldermen shall be completed, and all vacancies shall be filled in the said board; and in case neither a mayor nor any aldermen shall be elected at the usual time for electing the same, and after the powers of the former mayor and aldermen shall have ceased, it shall be the duty of the president of the common council to issue his warrant, in the same manner as the board of aldermen would have done, if elected, and the same proceedings shall be had and repeated, until a mayor, or one or more aldermen, shall be elected.

Election of aldermen.  
1821, 110, § 6.

SECT. 19. The qualified voters of said city shall, at the annual meeting, be called upon to give in their votes for twelve persons, being inhabitants of said city, to constitute the board of aldermen for the ensuing year, and all the votes so given, being sorted, counted, and declared by the warden and inspectors, shall be recorded at large by the clerk, in open ward meeting; and in making such declaration and record, the whole

number of votes or ballots given in shall be particularly stated, together with the name of every person voted for, and the number of votes given for each person; and a transcript of such record, certified by the warden and clerk, and a majority of the inspectors of each ward, shall forthwith be transmitted to the city clerk; whereupon the same proceedings shall be had to ascertain and determine the persons chosen as aldermen, as are hereinbefore directed in regard to the choice of mayor, and for a new election, in case of the whole number required not being chosen at the first election. And each alderman so chosen shall be duly notified in writing of his election by the mayor and aldermen for the time being.

SECT. 20. The qualified voters of each ward shall, at the annual election, be called upon to give in their votes for four able and discreet men, being inhabitants of the ward, to be members of the common council for the ensuing year; and all the ballots so given in, in each ward, being sorted, counted, and declared, a public declaration of the result shall be made by the warden in open ward meeting; and a record of such proceedings shall be kept by the clerk, in his journal, stating particularly the whole number of ballots given in, the number necessary to make a choice, the number actually given for each person, the whole to be written in words at length.

Election of  
common coun-  
cilmen.  
1821, 110, § 7.

SECT. 21. In case four persons are not chosen at the first balloting in any ward, the meeting of such ward shall be adjourned by the presiding officer, for the purpose of filling such vacancies, to a period not less than twenty-four, nor more than seventy-two, hours

Proceedings in  
case there is no  
choice of com-  
mon council-  
men.  
1821, 110, § 7.

distant from the hour when the polls were opened at the first balloting; the time of adjournment, within such limits, to be determined by the warden, with the consent of a majority of the inspectors who may be present when such adjournment is had; and such notice shall be given of the time of such adjournment, and the time the polls will be kept open, as the warden may direct; and at such adjourned meeting a balloting shall be opened for a number of common councilmen sufficient to complete the number of four, which shall be conducted, and its result be declared and recorded in the same manner as before prescribed for the first balloting.

Proceedings in case there is no choice of common councilmen.  
1821, 110, § 7.

SECT. 22. In case there shall still be vacancies in the number of common councilmen in any ward, adjournments of the meetings of the citizens thereof, for the purpose of filling the same, shall continue to be had in the same manner to periods not less than twenty-four, nor more than seventy-two, hours distant from each other, at all of which the balloting shall be conducted, and the result be declared and recorded in the same manner as before prescribed, until the number of four shall be duly chosen. And at all such adjournments the polls shall be kept open the same number of hours as are required by the original warrant.

Same subject.

SECT. 23. If at the close of the last legally adjourned meeting of any ward as aforesaid preceding the first Monday in January, there shall still be vacancies in the number of common councilmen for any ward, no further adjournment shall be had; but a record of the fact, and of the number of such vacancies, shall be made by the clerk of the ward in his journal, signed

therein by the warden, clerk, and a majority of the inspectors, an attested copy of which record shall forthwith be delivered by the clerk of the ward to the city clerk, who shall lay the same before the common council at their first meeting in January.

SECT. 24. The board of aldermen, the common council, and the school committee shall have authority to decide upon all questions relative to the qualifications, elections, and returns of their respective members.

Board of aldermen, &c., to judge of elections.  
1821, 110, § 7.

SECT. 25. Whenever it shall appear to the board of aldermen that there is a vacancy, by removal from the city, or by death, resignation, or otherwise, in the board of aldermen, the common council, the school committee,<sup>1</sup> or in any of the city and ward offices, it shall be the duty of said board to issue their warrant in due form to fill all such vacancies, in each and all of said boards and offices, at such time and place as they may deem advisable; and the same proceedings shall be had, and adjournments, if necessary, within the same limits, as are herein prescribed for the annual meeting for the election of common councilmen. But in case of vacancies in the common council, and school committee, such warrant shall not be issued until the board of aldermen receive official information thereof.

Vacancies in city or ward offices.  
G. S. 19, § 8.

SECT. 26. All city and ward officers shall be held to discharge the duties of the offices to which they have been respectively elected, notwithstanding their

Removal of city or ward officers from their wards.  
G. S. 19, § 10.

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<sup>1</sup> The mode of filling vacancies in the school committee, has been changed. See Gen. Stats. c. 38, §§ 17-19. See also *post*, *Schools*, stat. § 11.

removal after their election out of their respective wards, into any other wards of the city. But they shall not be so held after they have taken up their permanent residence out of the city.

Organization  
of city council.  
1821, 110, § 9.  
1824, 49, § 2.

Oath of office.

SECT. 27. The mayor, aldermen, and common councilmen, on the first Monday of January, or before entering on the duties of their offices, shall respectively be sworn, by taking the oath of allegiance and oath of office prescribed in the constitution of this commonwealth, and an oath to support the constitution of the United States. And such oaths may be administered to the mayor elect, by any one of the justices of the supreme judicial court, or any judge of any court of record commissioned to hold any such court within the said city, or by any justice of the peace for the county of Suffolk. And such oaths shall be administered to the aldermen and members of the common council by the mayor, being himself first sworn as aforesaid, or by either of the persons authorized to administer said oath to the mayor; and a certificate of such oaths having been taken shall be entered in the journal of the mayor and aldermen and of the common council respectively, by their respective clerks.

Absence of  
mayor elect.  
1830, 7, § 2.

SECT. 28. In case of the unavoidable absence on account of sickness, or otherwise, of the mayor elect on the first Monday in January, the City Government shall organize itself in the mode hereinbefore provided in cases wherein no person shall have been elected mayor at the meeting last preceding the first Monday in January, and may proceed to business in the same manner as if the mayor was present.

SECT. 29. After the organization of the City Government and the qualification of a mayor, and when a quorum of the board of aldermen shall be present, said board, the mayor presiding, shall proceed to choose a permanent chairman, who shall preside at all meetings of the board and at conventions of the two branches, in the absence of the mayor; and in case of any vacancy in the office of mayor for any cause, he shall exercise all the powers and perform all the duties of the office as long as such vacancy shall continue. But he shall continue to have a vote in the board, and shall not have the veto power.

Aldermen to  
choose a perma-  
nent chairman.

SECT. 30. The mayor, aldermen, and common council in convention in the month of January, shall choose a clerk for the term of one year, and until another person is duly chosen and qualified in his stead, who shall be sworn to the faithful discharge of the duties of his office, and shall be removable at the pleasure of the board of aldermen,—the mayor thereto consenting. He shall be denominated the city clerk, and it shall be his duty to keep a journal of the acts and proceedings of the board of aldermen, to sign all warrants issued by them, and to do such other acts in his said capacity, as may lawfully and reasonably be required of him; and to deliver over all journals, books, papers, and documents entrusted to him as such clerk, to his successor in office immediately upon such successor being chosen and qualified as aforesaid, or whenever he may be thereunto required by the aldermen. The city clerk thus chosen and qualified shall continue to have all the powers and perform all the duties now by law belonging to him.

City Clerk.  
1821, 110, § 10.

Vacancy in  
office of city  
clerk.

SECT. 31. In case of a vacancy in the office of city clerk, from any cause, the same shall be filled in the manner provided in the preceding section.

Absence of city  
clerk.

SECT. 32. In case of the temporary absence of the city clerk, the mayor, by and with the advice and consent of the board of aldermen, may appoint a city clerk *pro tempore*.

Powers and  
duties of board  
of aldermen.  
1821, 110, § 13.  
1852, 266.

SECT. 33. The administration of police, together with the executive powers of the said corporation generally, and all the powers formerly vested in the selectmen of the town of Boston, either by the general laws of this commonwealth, by particular laws relative to the powers and duties of said selectmen, or by the usages, votes, or by-laws of said town, and all the powers subsequently vested in the mayor and aldermen of said city, as county commissioners or otherwise, shall be, and hereby are vested in the board of aldermen, as hereby constituted, as fully and amply as if the same were herein specially enumerated. A majority of the members of the board shall constitute a quorum for the transaction of business. Their meetings shall be public, and the mayor, if present, shall preside, but without a vote.

G. S. 13, § 33.  
G. S. 19, § 17.  
G. S. 43, § 77.

1821, 110, § 11.

Common coun-  
cil a separate  
body.  
1821, 110, § 11.

SECT. 34. The persons so chosen and qualified as members of the common council of the said city, shall sit and act together as a separate body, distinct from that of the board of aldermen, except in those cases in which the two bodies are to meet in convention; and the said council shall have power, from time to time, to choose one of their own members to preside over their deliberations and to preserve order therein,

President.

and also to choose a clerk, who shall be under oath faithfully to discharge the duties of his office, who shall hold such office during the pleasure of said council, and whose duty it shall be to attend said council when the same is in session, to keep a journal of its acts, votes, and proceedings, and to perform such other services, in said capacity, as said council may require. All sittings of the common council shall be public; and twenty-five members shall constitute a quorum for the transaction of business.

Clerk.

Sittings to be public.  
Quorum.

SECT. 35. All other powers heretofore by law vested in the town of Boston, or in the inhabitants thereof, as a municipal corporation, or in the city council of the city of Boston, shall be and hereby are continued to be vested in the mayor, aldermen, and common council of the said city, to be exercised by concurrent vote, each board, as hereby constituted, having a negative upon the proceedings of the other, and the mayor having a veto power as hereinafter provided. More especially they shall have power to make all such needful and salutary by-laws, or ordinances, not inconsistent with the laws of this commonwealth, as towns by the laws of this commonwealth have power to make and establish, and to annex penalties not exceeding fifty dollars for the breach thereof, which by-laws and ordinances shall take effect and be in force from and after the time therein respectively limited, without the sanction or confirmation of any court or other authority whatsoever.

Powers of city council.  
1821, 110, § 15.

By-laws, ordinances, &amp;c.

SECT. 36. The city council shall also have power, from time to time, to lay and assess taxes for all purposes for which towns are by law required or author-

Assessment of taxes.  
1821, 110, § 15.

1822, 85.  
G. S. 11, § 30.

G. S. 11, §§ 22-  
54.

ized to assess and grant money, and also for all purposes for which county taxes may be levied and assessed, so long as other towns in the county shall not be liable to taxation for county purposes. But in the assessment and apportionment of all such taxes upon the polls and estates of all persons liable to contribute thereto, the same rules and regulations shall be observed as are now established by the laws of this commonwealth, or may be hereafter enacted, relative to the assessment and apportionment of town taxes.

Collection of  
taxes.  
1821, 110, § 15.

Assessors to be  
chosen.

Bonds may be  
required of all  
who collect,  
keep, or dis-  
burse public  
moneys.

SECT. 37. The said city council shall also have power to provide for the assessment and collection of such taxes, and to make appropriations of all public moneys, and provide for the disbursement thereof, and take suitable measures to ensure a just and prompt account thereof; and for these purposes, may either elect such assessors, and assistant-assessors, as may be needful, or provide for the appointment or election of the same, or any of them, by the mayor and aldermen, or by the citizens, as in their judgment may be most conducive to the public good, and may also require of all persons intrusted with the collection, custody, or disbursement of public moneys, such bonds, with such conditions and such sureties, as the case may in their judgment require.

City council  
may provide for  
the appoint-  
ment of city  
officers.  
1821, 110, § 16.

When may  
choose register  
of deeds.

SECT. 38. The city council may provide for the appointment or election of all necessary officers, for the good government of said city, not otherwise provided for, and may prescribe their duties, and fix their compensation, and may choose a register of deeds, whenever the city shall be one county.

SECT. 39. The city council shall have the care and superintendence of the public buildings, and the care, custody, and management of all property of the city, with power to lease or sell the same, except the Common and Faneuil Hall. And the said city council shall have power to purchase property, real or personal, in the name, and for the use of the city, whenever its interests or convenience may in their judgment require it.

Care and custody of city property.  
1821, 110, § 16.  
1859, 210, § 3.

Power to purchase property.

SECT. 40. All the power and authority now by law vested in the city council or in the board of mayor and aldermen, relative to the public health and the quarantine of vessels, shall continue to be vested in the city council, to be carried into execution by the appointment of one or more health commissioners; or in such other manner as the health, cleanliness, comfort, and order of the city may in their judgment require, subject to such alterations as the legislature may from time to time adopt. The powers and duties above named may be exercised and carried into effect by the city council, in any manner which they may prescribe, or through the agency of any persons to whom they may delegate the same, notwithstanding a personal exercise of the same, collectively or individually, is prescribed by previous legislation; and the city council may constitute either branch, or any committee of their number, whether joint or separate, the board of health for all, or for particular purposes.

Board of health.  
1821, 110, § 17.  
G. S. 26, § 2.  
12 Pick. 184.

SECT. 41. The board of aldermen shall be surveyors of highways for said city.

Surveyors of highways.  
1823, ch. 2.

SECT. 42. The city council shall, in the month of

City treasurer.

1821, 110, § 18.  
G. S. 17, § 44.

May, meet together in convention and elect a suitable person to be the treasurer of said city, who shall also be county treasurer; and who shall hold his office until his successor is chosen and qualified in his stead.

Members of  
city council  
ineligible to  
other offices.  
1821, 110, §§ 21,  
22.  
G. S. 19, § 12.

SECT. 43. No person shall be eligible to any office, the salary of which is payable out of the city treasury, who, at the time of his appointment, shall be a member of either the board of aldermen or the common council; and neither the mayor, nor any alderman, or member of the common council shall, at the same time, hold any office of emolument under the city government.

Representa-  
tives to gen-  
eral court.  
1821, 110, § 22.  
1831, 38.

SECT. 44. In the month of October, in each year, the city government shall meet in convention and determine the number of representatives which it may be expedient for the corporation to send to the general court in the ensuing year, within its constitutional limits, and to publish such determination, which shall be conclusive; and the number thus determined shall be specified in the warrant calling a meeting for the election of representatives.<sup>1</sup>

Compensation  
of the mayor.  
1821, 110, § 12.

SECT. 45. The mayor of the city, chosen and qualified as hereinbefore provided, shall be taken and deemed to be the chief executive officer of said corporation; and he shall be compensated for his services by a salary, to be fixed by the board of aldermen and common council, in convention assembled, payable at stated

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<sup>1</sup> The twenty-first article of amendment to the Constitution of the State, adopted by the people in May, 1857, changed the system of representation, and made this section of the charter inoperative. The number of representatives to the general court, apportioned to Suffolk County by the act of 1857, c. 308, re-enacted in the Gen. Stats. c. 8, § 6, is twenty-eight. Of these Boston has twenty-six, and Chelsea two.

periods ; which salary shall not exceed the sum of five thousand dollars annually, and he shall receive no other compensation or emoluments whatever ; and no regulations enlarging or diminishing such compensation shall be made, to take effect until the expiration of the year for which the mayor then in office shall have been elected, and said salary when fixed shall continue until changed by the city council as aforesaid.

SECT. 46. It shall be the duty of the mayor to be vigilant and active at all times in causing the laws for the government of said city to be duly executed and put in force ; to inspect the conduct of all subordinate officers in the government thereof, and as far as may be in his power to cause all negligence, carelessness, and positive violation of duty to be duly prosecuted and punished. He shall have power, whenever in his judgment the good of said city may require it, to summon meetings of the board of aldermen and common council, or either of them, although the meeting of said boards may stand adjourned to a more distant day, and shall cause suitable notice in writing of such meetings to be given to the respective members of said boards. And he shall, from time to time, communicate to both branches of the city council all such information, and recommend all such measures as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort, and ornament of the said city.

Powers and  
duties of the  
mayor.  
1821, 110, § 12.

SECT. 47. Every ordinance, order, resolution, or vote, to which the concurrence of the board of aldermen and of the common council may be necessary, (except on a question of convention of the two branches,) and every order of either branch, involving the expendi-

Veto power of  
the mayor.

ture of money, shall be presented to the mayor; if he approve thereof he shall signify his approbation by signing the same; but if not, he shall return the same with his objections, to the branch in which it originated, who shall enter the objections of the mayor at large on their records, and proceed to reconsider said ordinance, order, resolution, or vote; and if after such reconsideration, two thirds of the board of aldermen, or common council, notwithstanding such objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the city council, (if it originally required concurrent action,) where it shall also be reconsidered, and if approved by two thirds of the members present it shall be in force; but in all cases the vote shall be determined by yeas and nays, and if such ordinance, order, resolution, or vote shall not be returned by the mayor within ten days after it shall have been presented, the same shall be in force. But the veto power of the mayor shall not extend to the election of officers required by any law or ordinance to be chosen by the city council in convention, or by concurrent action, unless expressly so provided therein.

Veto power of  
the mayor.

SECT. 48. In all cases where anything is or may be required or authorized by any law or ordinance to be done by the mayor and aldermen, the board of aldermen shall first act thereon; and any order, resolution, or vote of said board shall be presented to the mayor for his approval, in the manner provided in the preceding section.

Mayor to ap-  
point officers  
by consent of  
aldermen.  
1821, 110, § 21.

SECT. 49. In all cases wherein appointments to office are directed to be made by the mayor and aldermen, they shall be made by the mayor, by and with the

advice and consent of the aldermen, and such officers may be removed by the mayor. Power of removal.

SECT. 50. In the case of the decease, inability, absence, or resignation of the mayor, and whenever there is a vacancy in the office from any cause, and the same being declared, and a vote passed by the aldermen and common council respectively, declaring such cause and the expediency of electing a mayor for the time being to supply the vacancy thus occasioned, the board of aldermen shall issue their warrants in due form for the election of a mayor, and the same proceedings shall be had as are hereinbefore provided for the choice of a mayor. Vacancy in the office of mayor. 1821, 119, § 5.

SECT. 51. All boards and officers, acting under the authority of the said corporation and intrusted with the expenditure of public money, shall be accountable therefor to the city council in such manner as they may direct, and it shall be the duty of the city council to publish and distribute annually, for the information of the citizens, a particular statement of the receipts and expenditures of all public moneys, and a particular statement of all city property. Accountability of all boards and officers for public money. 1821, 110, § 20.

Annual financial statement.

SECT. 52. The qualified voters of each ward shall, at the annual meeting, be called upon to give in their votes for one able and discreet person, being an inhabitant of the ward, to be an overseer of the poor; and thereupon the same proceedings shall be had as are before directed in the election of members of the common council. And the persons thus chosen, shall together constitute the board of overseers for said city, and shall continue to have all the powers, and be Election of overseers of the poor. 1821, 110, § 19.

Their powers and duties. 22 Pick. 122.

subject to all the duties, now by law appertaining to the overseers of the poor, of the city of Boston, until the same shall be altered or qualified by the legislature.

The school  
committee.  
1835, 128, § 1.  
G. S. 38, §§ 17,  
18, 19.

SECT. 53. The school committee shall consist of the mayor of the city, the president of the common council, and of the persons hereinafter mentioned. A majority of the persons duly elected shall constitute a quorum for the transaction of business; and at all meetings of the board, the mayor, if present, shall preside.

Same subject.

SECT. 54. At the annual election next after the passage of this act, the qualified voters of each ward shall be called upon to give in their ballots for six inhabitants of the ward, to be members of the school committee; and the two persons who receive the highest number of votes, or in case more than two receive an equal number of votes, the two persons who are senior by age shall hold their office for three years from the second Monday in January next ensuing, and the next two persons who receive the highest number of votes, or who are senior by age in the contingency aforesaid, shall hold their office for two years from said date, and the two other persons shall hold their office for one year from said date; and at every subsequent annual election, two persons shall be chosen in each ward, to be members of the school committee for the term of three years.

Organization of  
school com-  
mittee.

Secretary and

SECT. 55. The persons so chosen, as members of the school committee, shall meet and organize on the second Monday of January, at such hour as the mayor may appoint. They may choose a secretary and such

subordinate officers as they may deem expedient, and shall define their duties, and fix their respective salaries.

subordinate  
officers.

SECT. 56. The said committee shall have the care and management of the public schools, and may elect all such instructors as they may deem proper, and remove the same whenever they consider it expedient. And generally they shall have all the powers in relation to the care and management of the public schools which the selectmen of towns or school committees are authorized by the laws of this commonwealth to exercise.

Powers and  
duties of school  
committee.  
1821, 110, § 19.

G. S. ch. 38-42

SECT. 57. Every male citizen of twenty-one years of age and upwards, excepting paupers and persons under guardianship, who shall have resided within the commonwealth one year and within the city six months next preceding any meeting of citizens, either in wards, or in general meeting, for municipal purposes, and who shall have paid by himself or his parent, master, or guardian, any state or county tax, which, within two years next preceding such meeting, shall have been assessed upon him, in any town or district in this commonwealth, and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned, shall have a right to vote at such meeting, and no other person shall be entitled to vote at such meeting.<sup>1</sup>

Qualifications  
of voters at  
municipal  
elections, &c.  
1821, 110, § 8.  
G. S. 6, § 1.

<sup>1</sup> By the twentieth amendment of the Constitution of the State, no person shall have a right to vote "who shall not be able to read the Constitution in the English language and write his name." The amendment does not, however, apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who in May, 1857, had the right to vote, or who was then sixty years of age and upwards.

Board of aldermen to make lists of voters prior to every election.

1821, 110, § 24.  
G. S. 6, §§ 5-9.  
12 Pick. 492.  
10 Cush. 145.  
4 Gray, 433.

Inspectors to allow no one to vote whose name is not on the list.  
G. S. 7, § 9.

1863, 144, § 4.

SECT. 58. It shall be the duty of the board of aldermen, prior to every election of city officers, or of any officer or officers under the government of the United States or of this commonwealth, to make out lists of all the citizens of each ward qualified to vote in such election, in the manner in which selectmen and assessors of towns are required to make out similar lists of voters, and for that purpose they shall have free access to the assessors' books and lists, and shall be entitled to the aid and assistance of all assessors, assistant-assessors, and other officers of said city. And it shall be the duty of said board of aldermen to deliver such list of the voters in each ward, so prepared and corrected, to the clerk of said ward, to be used by the warden and inspectors thereof at such election; and no person shall be entitled to vote at such election, whose name is not borne on such list. And to prevent all frauds and mistakes in such elections, it shall be the duty of the inspector, in each ward, to take care that no person shall vote at such election, whose name is not so borne on the list of voters, and to cause a mark to be placed against the name of each voter on such list, at the time of giving in his vote. And the city council shall have authority to establish such rules and regulations, as to making out, publishing, and using such lists of qualified voters, as they shall deem proper, not inconsistent with the constitution and laws of the commonwealth.

Elections of national and State officers.  
1821, 110, § 23.  
G. S. ch. 8, 9, 10.

SECT. 59. All elections for governor, lieutenant-governor, senators, representatives, representatives to congress, and all other officers who are to be chosen and voted for by the people, shall be held at meetings of the citizens qualified to vote in such elections, in

their respective wards, at the time fixed by law for those elections respectively. And at such meetings, all the votes given in, being collected, sorted, counted, and declared by the inspectors of elections, in each ward, it shall be the duty of the clerk of such ward to make a true record of the same, specifying therein the whole number of ballots given in, the name of each person voted for, and the number of votes for each, expressed in words at length. And a transcript of such record, certified by the warden, clerk, and a majority of the inspectors of elections, in such ward, shall forthwith be transmitted or delivered by each ward clerk to the clerk of the city. And it shall be the duty of the city clerk forthwith to enter such returns, or a plain and intelligible abstract of them, as they are successively received, in the journals of the proceedings of the board of aldermen, or in some other book kept for that purpose. And it shall be the duty of the board of aldermen to meet together within two days after every such election, and examine and compare all the said returns, and thereupon to make out a certificate of the result of such election, to be signed by a majority of the aldermen, and also by the city clerk, which shall be transmitted, delivered, or returned in the same manner as similar returns are by law directed to be made by the selectmen of towns; and such certificates and returns shall have the same force and effect in all respects, as like returns of similar elections made by the selectmen of towns. At the election of governor, lieutenant-governor, and senators, it shall be the duty of the board of aldermen to make and seal up separate lists of persons voted for as governor, lieutenant-governor, and senators of the commonwealth, with the number of votes for each person, written in words at

1863, 144

Examination  
and return of  
votes.

Certificate.

Separate lists  
of votes for  
governor, &c.,  
to be transmit-  
ted to the secre-  
tary of state or  
to the sheriff.  
G. S. 7, § 17.

Votes for electors of president, &c., how and when to be transmitted to the secretary.  
G. S. 7, §§ 15-17.  
G. S. 9, § 12.

Proceedings in case representatives are not chosen.  
G. S. 8, § 9.  
See *ante*, § 44 and note.

Proceedings in case of no election of representatives to Congress.  
G. S. 9, §§ 5-7.

General meetings of the citizens.  
1821, 110, § 25.

length against his name, and to transmit said lists to the secretary of the commonwealth or to the sheriff of the county. The board of aldermen shall within three days next after the day of any election of electors of president and vice-president of the United States, held by virtue of the laws of this commonwealth, or of the United States, deliver, or cause to be delivered the list of votes therefor, sealed up, to the sheriff of the county, and the said sheriff shall within four days after receiving said lists, transmit the same to the office of the secretary of the commonwealth, or the said aldermen may, and when the office of sheriff is vacant, they shall themselves transmit the said lists to the said office within seven days after the election, and all votes not so transmitted shall be rejected. In all elections for representatives to the general court, in case the whole number proposed to be elected shall not be chosen according to law by the votes legally returned, the board of aldermen shall forthwith issue their warrants for a new election, agreeably to the constitution and laws of this commonwealth, and the same proceedings shall be had in all respects as are hereinbefore directed; and in case of no choice being made of representatives to Congress, in either district, of which the city of Boston composes a part, or in case of any vacancy happening in said districts, or either of them, the governor shall cause precepts for new elections, to be directed to the board of aldermen of said city, as often as occasion shall require; and such new elections shall be held, and all proceedings thereon had, and returns made in conformity with the foregoing provisions.

SECT. 60. General meetings of the citizens, qualified to vote in city affairs, may from time to time be

held to consult upon the common good, to give instructions to their representatives, and to take all lawful measures to obtain a redress of any grievances, according to the right secured to the people by the constitution of this commonwealth. And such meetings shall and may be duly warned by the board of aldermen, upon the requisition of fifty qualified voters of said city. The mayor, if present, shall preside, and the city clerk shall act as the clerk of such meetings.

Const. Part I.  
Art. 19.

SECT. 61. All warrants for the meetings of the citizens for municipal purposes, to be had either in general meetings or in wards, shall be issued by the board of aldermen, and in such form, and shall be served, executed, and returned at such time and in such manner, as the city council may by any by-law or ordinance direct and appoint.

Warrants for  
meetings to be  
issued by the  
board of alder-  
men.  
1821, 110, § 26.

SECT. 62. Nothing in this act contained shall be so construed as to restrain or prevent the legislature from amending or altering the same, whenever they shall deem it expedient.

Power of legis-  
lature to alter  
the charter.  
1821, 110, § 30.

SECT. 63. All acts and parts of acts inconsistent with this act, are hereby repealed. Provided, however, that the repeal of the said acts shall not affect any act done, or any right accruing or accrued, or established, or any suit or proceeding had or commenced in any civil case, before the time when such repeal shall take effect. And that no offence committed, and no penalty or forfeiture incurred under the acts hereby repealed, and before the time when such repeal shall take effect, shall be affected by the repeal. And that no suit or prosecution pending at the time of the said repeal,

Repeal of in-  
consistent acts  
Proviso.

for any offence committed, or for the recovery of any penalty or forfeiture incurred under the acts hereby repealed, shall be affected by such repeal; and provided also, that all persons, who, at the time when the said repeal shall take effect, shall hold any office under the said acts shall continue to hold the same according to the tenure thereof. And provided also, that all the by-laws and ordinances of the city of Boston, which shall be in force at the time when the said repeal shall take effect, shall continue in force until the same are repealed by the city council. And all officers elected under such by-laws and ordinances, shall continue in office according to the tenure thereof.

Repeal not to  
revive other  
acts.

SECT. 64. No act which has been heretofore repealed shall be revived by the repeal of the acts mentioned in the preceding section.

Act to be void  
unless adopted  
by the citizens.

Adopted  
Nov. 13, 1854.

SECT. 65. This act shall be void unless the inhabitants of the city of Boston, at a legal meeting called for that purpose, by a written vote, determine to adopt the same; and the qualified voters of the city shall be called upon to give in their votes upon the acceptance of this act, at meetings in the various wards duly warned by the mayor and aldermen, to be held on or before the second Monday of November; and thereupon the same proceedings shall be had respecting the sorting, counting, declaring, recording, and returns of said votes as is herein provided at the election of mayor; and the board of mayor and aldermen shall within three days meet together and compare the returns of the ward officers, and if it appear that the citizens have voted to adopt this act, the mayor shall make proclamation of the fact, and, thereupon, the act shall

If adopted  
when to take  
effect.

take effect for the purpose of electing municipal officers at the next annual election, and for all other purposes it shall take effect on and after the first Monday of January next.<sup>1</sup>

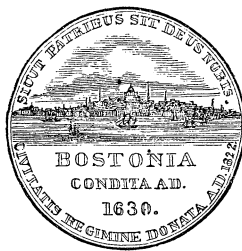
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### SEAL OF THE CITY.

#### AN ORDINANCE TO ESTABLISH THE CITY SEAL.

*Be it ordained by the Mayor, Aldermen, and Common Council of the City of Boston, in City Council assembled,* That the design hereto annexed, as sketched by John R. Penniman, giving a view of the city, be the device of the city seal; that the motto be as follows, to wit: "SICUT PATRIBUS SIT DEUS NOBIS;" and that the inscription be as follows, to wit: "BOSTONIA CONDITA A. D. 1630. CIVITATIS REGIMINE DONATA A. D. 1822."

Ordinance to  
establish the  
city seal.  
Jan. 2, 1823.




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<sup>1</sup> For the powers and duties of cities, see General Statutes, chapters 18 and 19. The most important provisions of these chapters are incorporated in their proper places, under the various titles of this volume.

## ACTIONS.

## STATUTES.

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Actions, &amp;c., by and against the city, where may be brought, and when may be removed.</li> <li>2. If brought by the city in Suffolk County, defendant may remove to another county. Proceedings in such case.</li> <li>3. Civil actions to recover forfeitures, where to be brought.</li> </ol> | <ol style="list-style-type: none"> <li>4. Inhabitants of Boston not disqualified by interest from acting as jurors, &amp;c.</li> <li>5. Board of Aldermen may authorize any person to enter into a recognizance in behalf of the city.</li> <li>6. In prosecutions, &amp;c., on special acts, ordinances, &amp;c., what must be set out, and what need not be set forth.</li> </ol> |
|---|---|

Actions, &c., by and against the city, where may be brought, and when may be removed.  
G. S. 123, § 6.

1. Actions, suits, and prosecutions by and against the city of Boston may be brought in either of the counties of Suffolk, Essex, Middlesex, or Norfolk, or in the county where the plaintiff lives; but if brought by the city in the county of Suffolk, may be removed to one of the other of said counties, as provided in the following section.

If brought by the city in Suffolk County defendant may remove to another county. Proceedings in such case.  
G. S. 123, § 7.

2. The defendant or tenant, at the term at which his appearance is entered, may file a motion in writing for the removal of the suit, and the court shall thereupon order it to be removed to the proper court in such one of the other of said counties as the attorney of the city of Boston elects. Said attorney shall enter the same accordingly in the court so designated, at the then next term, and file therein certified copies of the writ or other process and of the order of removal; and the proceedings shall be conducted in like manner as if the suit had been originally commenced in that county.

Civil actions to recover forfeitures, where to be brought.  
G. S. 123, § 8.

3. Every civil action for the recovery of a forfeiture shall be brought in the county in which the offence was committed, unless a different provision is made in the statute imposing the forfeiture.

Inhabitants of Boston not disqualified by interest from act-

4. No person shall be disqualified from acting as judge, magistrate, appraiser, or officer of any kind in a suit or proceeding in which any city or town is interested, by reason of

his interest as an inhabitant thereof. And no juror shall be disqualified by reason of being an inhabitant of the city of Boston.

ing as jurors,  
&c.  
G. S. 122, § 13.  
11 Cush. 411, 412.

5. When a town or city is required to enter into a recognizance, the selectmen of the town or the mayor and aldermen of the city may by an order or vote authorize any person to enter into the recognizance in the name and behalf of the town or city, and it shall be binding like any other contract made by such town or city. No surety shall be required in such recognizance.

Board of Aldermen may authorize any person to enter into a recognizance in behalf of the city.  
G. S. 18, § 18.  
G. S. 19, §§ 2, 17.

6. In all prosecutions by complaint before the police court for the city of Boston, founded on the special acts of the legislature, the by-laws of the town of Boston, or the ordinances or the by-laws of the city of Boston, it shall be sufficient to set forth, in such complaint, the offence fully and plainly, substantially and formally; and in such complaint it shall not be necessary to set forth such special act, by-law, ordinance, or any part thereof.

In prosecutions, &c., on special acts, ordinances, &c., what must be set out, and what need not be set forth.  
1824, 28, § 5.  
G. S. 171, § 16.

The General Statutes, Chap. 171, § 16, extend this provision to any "complaint, prosecution, or other process."

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## ALIEN PASSENGERS.

The provisions of law relating to alien passengers have been omitted from this volume, because the management of these passengers has been transferred to the State, and is no longer any duty of the city of Boston.

Such provisions of law can be found in the General Statutes, chapter 71, and in the acts of 1863, chapter 240.

## AMUSEMENTS.

## STATUTES.

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|---|---|
| 1. Board of Aldermen may license theatrical and other exhibitions.<br>2. Penalty for setting up, &c., such exhibition without license.<br>3. Penalty for setting up theatrical exhibitions at which lager-bier, &c., is sold. | 4. Masked balls, &c., forbidden under penalty.<br>5. Police court shall bind over offenders and require sureties for their good behavior.<br>6. Penalty for exhibiting the fighting of birds, &c. |
|---|---|

Board of aldermen may license theatrical and other exhibitions.  
 1821, 110, § 13.  
 City Chart. § 33.  
 G. S. 88, § 74.  
 G. S. 19, § 17.  
 9 Pick. 415.  
 7 Gray, 162.

1. The mayor and aldermen or selectmen of any city or town may license theatrical exhibitions, public shows, public amusements and exhibitions of every description, to which admission is obtained upon payment of money or the delivery of any valuable thing, or by a ticket or voucher, obtained for money or any valuable thing, upon such terms and conditions as they deem reasonable; and they may revoke or suspend the same at their pleasure.

Penalty for setting up, &c., such exhibition without license.  
 G. S. 88, § 75.  
 4 Cush. 74.  
 6 Cush. 174.

2. Whoever offers to view, sets up, sets on foot, maintains, carries on, publishes, or otherwise assists in or promotes, any such exhibition, show, or amusement, without such license, shall be punished by fine not exceeding five hundred dollars for each offence.

Penalty for setting up theatrical exhibitions at which lager-bier, &c., is sold.  
 G. S. 88, § 76.

3. Whoever offers to view, sets up, sets on foot, maintains, or carries on, a theatrical exhibition, public show, concert or dance-hall exhibition, of any description, at which lager-bier or other intoxicating liquors are sold or exposed for sale, with the consent of those who get up, set on foot, or otherwise promote, such exhibitions or shows, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the house of correction not more than two years, unless such exhibition or show has been first duly licensed as provided by section one. This section shall not authorize the licensing of the sale at any exhibition or show, of liquors the sale of which is prohibited by law.

Masked balls, &c., forbidden under penalty.  
 G. S. 88, § 77.

4. Whoever gets up, sets on foot, causes to be published, or otherwise aids in getting up and promoting, any masked ball or other public assembly, at which the company wear masks or

other disguises and to which admission is obtained upon payment of money or the delivery of any valuable thing, or by a ticket or voucher obtained for money or any valuable thing, shall for the first offence be punished by fine not exceeding five hundred dollars; and for any subsequent offence, by imprisonment in the jail or house of correction not exceeding one year.

5. Any justice of the peace or police court, upon complaint made of an offence against the provisions of the three preceding sections, shall bind over all persons so offending, to appear at the next term of the superior court, and shall also require such persons to find sureties for the keeping of the peace and being of good behavior until such term of the court, and shall commit such persons upon their refusing or neglecting so to recognize and find sureties.

Police court shall bind over offenders and require sureties for their good behavior.  
G. S. 88, § 78.

6. Whoever establishes or promotes an exhibition of the fighting of birds or animals, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the house of correction not exceeding six months. Whoever is present at, or aids in, or contributes to such an exhibition, shall be punished by fine not exceeding ten dollars.

Penalty for exhibiting the fighting of birds, &c.  
G. S. 88, § 79.

## ARMORIES.

### STATUTES.

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| <ol style="list-style-type: none"> <li>1. Board of aldermen to provide armories for the militia of the city.</li> <li>2. To transmit annually a certificate to the adjutant-general. Contents of such certificate.</li> <li>3. Adjutant-general to examine cer-</li> </ol> | <ol style="list-style-type: none"> <li>tificates and allow for rent not over three hundred dollars for each company. Money, how to be paid.</li> <li>4. Penalty on city for false certificate.</li> <li>5. Armories may be examined at any time by State officers.</li> </ol> |
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1. The mayor and aldermen and selectmen shall provide for each company of militia within the limits of their respective places a suitable armory or place of deposit for the arms, equipments, and equipage furnished it by the State. When a company is formed from different places, the location of such armory

Board of aldermen to provide armories for the militia of the city.  
City Chart. § 33.  
G. S. 13, § 88.  
G. S. 19, § 17.

or place of deposit shall be determined by a majority of its members.<sup>1</sup>

To transmit annually a certificate to the adjutant-general. Contents of certificate.  
G. S. 13, § 89.

2. They shall annually in October or November transmit to the office of the adjutant-general a certificate, verified by the oath or affirmation of at least two of their board, showing the name of each company furnished with an armory, the amount paid for the rent thereof, and stating that a majority of their board consider such armory necessary for the use of such company, and that the rent charged therefor is fair and reasonable according to the value of real estate in their place.

Adjutant-general to examine certificates and allow for rent, not over \$300 for each company.  
Money, how to be paid.  
G. S. 13, § 90.

3. The adjutant-general shall annually examine all certificates so returned to his office, institute any inquiries he deems expedient relative thereto, and allow them in whole or in part to an amount not exceeding three hundred dollars for one company. He shall within ten days after such examination file in the office of the auditor his certificate stating the sums allowed, the name of the company for whose use each sum is allowed, and the place to which it belongs; and shall thereupon notify the mayor, aldermen, or selectmen, of the sum allowed to their place, which sum shall be paid upon the warrant of the governor to such mayor and aldermen or selectmen, as provided by law for the reimbursement of sums paid for military service.

Penalty on city for false certificate.  
G. S. 13, § 91.

4. A city or town receiving from the treasury of the commonwealth, by reason of a false return or certificate, under section two, any money to which such place is not entitled, shall forfeit a sum not exceeding four times the amount of money so received.

Armories may be examined at any time by State officers.  
G. S. 13, § 92.

5. The commander-in-chief may at any time detail an officer to examine any armory and report the condition thereof, and of the arms, equipments, and equipage therein deposited.

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<sup>1</sup> The act of 1861, c. 165, provides that any city council, by a vote of two thirds of the members of each branch present, and voting by a yea and nay vote, may raise and appropriate money to provide armories, &c.; the amount of such appropriation not to exceed one fiftieth of one per cent. of its valuation for the year. See *Taxes, Assessment of*, p. , *post*.

## AUCTIONEERS.

## STATUTES.

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Board of aldermen may license auctioneers. Fees. Record.</li> <li>2. If they refuse, county commissioners may license.</li> <li>3. Auctioneers to give bond.</li> <li>4. To keep an account of sales, &amp;c.</li> <li>5. Penalty for receiving goods for sale from minors, &amp;c.</li> <li>6. Where auctioneers may sell. Penalty for selling where they are not authorized.</li> <li>7. Goods sold, &amp;c., at auction, ex-</li> </ol> | <ol style="list-style-type: none"> <li>cept as authorized, shall be forfeited.</li> <li>8. Penalty on tenants or occupants of any house or store if they permit unlicensed sales therein.</li> <li>9. Penalty for selling without license.</li> <li>10. Sales of sheriffs, &amp;c., not included herein.</li> <li>11. Penalty for fraud or deceit in auction sales.</li> <li>12. Licenses may be granted upon conditions, &amp;c. Penalty for violation thereof.</li> </ol> |
|--|---|

1. The mayor and aldermen and selectmen of any city or town, by writing under their hands, may license one or more suitable inhabitants of their respective cities and towns, to be auctioneers within the same for the term of one year, and may receive to the use of the city or town for each license the sum of two dollars. They shall record every license in a book to be kept by them for that purpose.

Board of aldermen may license auctioneers. Fees. Record. City Chart. § 33. G. S. 50, § 1.

2. If on application made to them in writing they unreasonably refuse or neglect to license the applicant, he may, after giving them fourteen days' notice and bonds to pay all costs, apply to the county commissioners, who, upon hearing the parties, may grant a license.

If they refuse, county commissioners may license. G. S. 50, § 2.

3. Each auctioneer shall, if required, give bonds, in a reasonable penalty with sufficient sureties to the treasurer of the city or town where he is licensed, with condition that he shall in all things conform to the laws relating to auctions.

Auctioneers to give bond. G. S. 50, § 3.

4. Every auctioneer shall keep a fair and particular account of all goods and chattels sold by him, and of the persons from whom received, and to whom sold.

To keep an account of sales, &c. G. S. 50, § 4.

5. An auctioneer who receives for sale by auction any goods from a minor, knowing him to be such, or sells by auction any of his own goods before sunrise or after sunset, shall forfeit to

Penalty for receiving goods for sale from minors, &c. G. S. 50, § 5.

5 Mass. 505. the use of the town a sum not exceeding two hundred dollars for each offence.

Where auctioneers may sell. 6. An auctioneer may sell at public auction in any place within his county; and when employed by others, may sell real or personal estate upon the premises where the same is situated in any place within the State. If an auctioneer sells by auction in any place where he is not authorized to sell, he shall forfeit fifty dollars.  
Penalty for selling where they are not authorized.  
G. S. 50, § 6.

Goods sold, &c., at auction, except as authorized, shall be forfeited.  
G. S. 50, § 7. 7. If a person sells or offers for sale by auction any goods or chattels in any city or town except as is provided in this chapter,<sup>1</sup> the same shall be forfeited to the use of the city or town, and may be seized by the mayor and aldermen or selectmen, and libelled according to the provisions of chapter one hundred and fifty-three of the General Statutes.

Penalty on tenants or occupants of any house or store, if they permit unlicensed sales therein.  
G. S. 50, § 8. 8. The tenant or occupant of any house or store, having the actual possession and control of the same, who knowingly permits a person to sell real or personal estate by public auction in such house or store, or in any apartment or yard appurtenant to the same, contrary to the provisions of this chapter,<sup>1</sup> shall forfeit a sum not exceeding five hundred dollars.

Penalty for selling without license.  
G. S. 50, § 9. 9. If a person, not licensed and qualified as an auctioneer, sells or attempts to sell any real or personal estate by public auction, he shall for each offence forfeit a sum not exceeding five hundred dollars.

Sales by sheriffs, &c., not included herein.  
G. S. 50, § 10. 10. Nothing in the preceding sections shall extend to sales made by sheriffs, deputy-sheriffs, coroners, constables, collectors of taxes, executors, administrators, guardians, assignees of insolvent debtors, or any other person required by law to sell real or personal estate.

Penalty for fraud or deceit in auction sales.  
G. S. 50, § 11. 11. Every auctioneer or other person who is guilty of fraud or deceit in relation to any sale by auction, shall for each offence forfeit a sum not exceeding one thousand dollars.

Licenses may be granted upon conditions, &c. Penalty for violation thereof.  
G. S. 50, § 12. 12. Licenses may be granted upon such conditions respecting the places of selling goods and chattels within a city or town as the mayor and aldermen or selectmen deem expedient; and

<sup>1</sup> Chapter 50 of the General Statutes.

if an auctioneer makes a sale by auction at a place not authorized by his license, he shall be liable to like penalties as if he had sold without a license. G. S. 50, § 12.

## BOARD OF ACCOUNTS.

Board of accounts for the county of Suffolk. Quorum. Duties. Pay.

IN the county of Suffolk, the judge of the probate court and the justices of the police court of the city of Boston shall be a board of accounts, three of whom shall constitute a quorum; who shall meet quarter yearly, and as much oftener as may be necessary, to examine and allow bills of costs, accounts, and charges arising in said police court and in the maintenance and keeping of the prisoners in the jail of the county of Suffolk, and of other expenses and charges in keeping said jail and other places of confinement and punishment in said city. They shall certify such accounts, charges, and expenses, as are allowed by them, by an indorsement thereon addressed to the public officer by whom the same are payable. They shall each receive three dollars a day while employed in the discharge of said duties.

Board of accounts for the county of Suffolk.  
G. S. 17, § 50.  
G. S. 178, § 51.  
Quorum;  
duties; pay.

## BOATS AND LIGHTERS.

### STATUTES.

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| <ol style="list-style-type: none"> <li>1. Board of aldermen shall appoint weighers of vessels, who shall be sworn.</li> <li>2. Vessels, &amp;c., to be marked. Marks; of what material, and how to be fastened.</li> <li>3. Duty of weighers.</li> <li>4. Deduction may be made of one ton for every inch.</li> <li>5. Persons on board, where to keep while marks are being taken.</li> </ol> | <ol style="list-style-type: none"> <li>6. Marks to be examined annually. Duty of weighers in such examination.</li> <li>7. Fees of weighers.</li> <li>8. Penalty on owner, &amp;c., for neglect to have lighters weighed.</li> <li>9. Penalty on weigher for placing false marks, &amp;c.</li> <li>10. Cities may establish ordinances respecting weighing, &amp;c., lighters, &amp;c., employed in transporting stone, &amp;c.</li> </ol> |
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## ORDINANCE.

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. Weigher and inspector in chief of lighters, &amp;c., and three assistants to be chosen annually, and to be sworn.</li> <li>2. Weigher and inspector in chief to give bond.</li> <li>3. Duty of weigher and inspector in chief.</li> <li>4. Duty of assistant weighers and inspectors.</li> <li>5. Weighers and inspectors to give certificates of stones, &amp;c., inspected, and keep accounts, &amp;c.</li> <li>6. Lighters, &amp;c., to be marked.</li> <li>7. Weighers and inspectors to furnish marks and nails when requested, to keep account of distance of marks, and give certificates thereof.</li> <li>8. Deduction may be made of one ton for every inch.</li> <li>9. Penalty for not keeping within certain bounds while marks are taken.</li> <li>10. Marks to be examined annually. Duty of weigher and inspector in such examination. His fees.</li> <li>11. Stones, gravel, ballast, &amp;c., to be inspected.</li> </ol> | <ol style="list-style-type: none"> <li>12. Mode of inspection. Penalty for wilfully hindering any weigher and inspector.</li> <li>13. Penalty for delivering stones, &amp;c., without inspection, or for altering or counterfeiting marks or certificates.</li> <li>14. Fees for inspecting weight of stones, ballast, &amp;c.</li> <li>15. Fees for weighing lighters, &amp;c.</li> <li>16. Accounts of weighers and inspectors, what to specify.</li> <li>17. Office hours of weighers and inspectors.</li> <li>18. Penalty on owner, &amp;c., for neglecting to have vessels weighed, &amp;c.</li> <li>19. Penalty on weigher for placing false marks, or giving false certificates.</li> <li>20. Master of lighter to report his arrival.</li> <li>21. Master to produce certificates when demanded, under a penalty.</li> <li>22. No officer of city to purchase stones, &amp;c., unless, &amp;c.</li> <li>23. Who shall not be a weigher and inspector.</li> </ol> |
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## STATUTES.

Board of aldermen shall appoint weighers of vessels, who shall be sworn.  
 G. S. 19, § 17.  
 G. S. 52, § 30.  
 11 Met. 59.  
 See § 10.

Vessels, &c., to be marked.  
 G. S. 52, § 31.

1. The mayor and aldermen and selectmen of cities and towns where lighters or other vessels are employed in transporting stones, gravel, or sand, shall annually in March or April appoint one or more weighers of vessels, who shall be sworn.

2. Every lighter or other vessel employed in transporting stone sold by weight, or gravel or sand, shall be marked on the stem and stern post nearly level with the bend of the vessel, with stationary marks of bar iron, not less than six inches in length, and two and a half inches in breadth, fastened with two good and sufficient iron bolts, driven through said stem and stern post and riveted into said bar iron, from which all other marks shall

take their distance in feet, inches, and parts of inches, as the distance may require, from the lower edge of the stationary marks to the lower edge of the other marks; which marks shall

**Marks.**

be as follows: light-water marks not less than four inches in length and one inch and a half in breadth; and every four tons above said light-water marks legibly cut, or cast, in figures of 4, 8, 12, 16, 20, and so forth, up to the full capacity of the vessel. Said figures shall express the weight which such vessel is capable of carrying when the lower part of the respective numbers aforesaid shall touch the water; and all the marks shall be of good and sufficient lead or copper, fastened on the stem and stern post of each vessel with sufficient nails not less than one inch in length.

*Of what material, and how to be fastened.*

3. Each weigher, when thereto requested, shall furnish the requisite marks and nails, and shall cause lighters and other vessels to be weighed and marked in conformity with the provisions of the preceding section; and during the time of weighing and marking them, all persons employed on board shall be stationed between the bulkhead and the fore chains. He shall keep a correct account of the distance of each mark below the stationary marks, in feet, inches, and parts of inches, in a book provided for that purpose, and give a certificate thereof expressing the distance, to the master of every such vessel.

*Duty of weighers.*  
G. S. 52, § 32.

4. In taking the tonnage of every such vessel, a deduction may be made of one ton, for every inch that the light-water marks may be under water, after such vessel has discharged her loading.

*Deduction may be made of one ton for every inch.*  
G. S. 52, § 33.

5. Every person on board of such vessel, who does not keep within the bounds of the bulkhead and fore chains during the time of taking her marks, or while any weigher is employed in weighing or marking, unless in case of absolute necessity, shall forfeit a sum not exceeding twenty dollars for each offence.

*Persons on board, where to keep while marks are being taken.*  
G. S. 52, § 34.

6. Such vessels shall have their marks examined annually in June, by a sworn weigher, and if the marks agree with their former certificates, he shall certify the same accordingly. Otherwise he shall keep such certificates in his possession, to be used as evidence against the master or owner of such vessel in

*Marks to be annually examined. Duty of weigher in such examination.*  
G. S. 52, § 35.  
11 Met. 59.

G. S. 52, § 35. any prosecution under the provisions of this chapter,<sup>1</sup> and such vessel shall be weighed again.

Fees of weigh-  
ers.  
G. S. 52, § 36.

7. Each weigher shall receive from the owner or master of a vessel weighed and marked, twenty cents for every ton of such vessel, and four dollars for furnishing marks, nails, and other necessary articles, fastening the same, and giving the certificate. For the services required by the preceding section, he shall receive one dollar and fifty cents.

Penalty for  
neglecting to  
have lighters  
weighed.  
G. S. 52, § 37.

8. Every owner or master of any such vessel who neglects to have the same weighed, marked, and examined, according to the provisions of this chapter,<sup>1</sup> or who removes any marks, or alters his certificate, shall forfeit a sum not exceeding three hundred dollars for each offence.

Penalty for  
placing false  
marks, &c.  
G. S. 52, § 38.

9. Every weigher who places any such mark contrary to the provisions of this chapter,<sup>1</sup> or who gives a false certificate, shall forfeit a sum not exceeding three hundred dollars for each offence.

Cities may  
establish ordi-  
nances respect-  
ing weighing,  
&c., lighters,  
&c., employed  
in transporting  
stone, &c.  
G. S. 52, § 39.

10. Any city or town may establish ordinances respecting marking and weighing of lighters and other vessels employed in transporting stones, gravel, sand, or other ballast; the inspection and weighing of such ballast within the city or town, and the appointment and compensation of weighers, markers, inspectors, and other officers necessary to carry the same into effect; and may affix penalties for breaches thereof, not exceeding those mentioned in sections five, eight, and nine; which ordinances, so far as they extend, shall regulate the subject-matter thereof within the limits of the city or town.

#### ORDINANCE.<sup>2</sup>

Weigher and  
inspector-in-  
chief, and three  
assistants to be

SECTION 1. There shall be chosen annually in the month of March or April, by concurrent vote of the two branches of the city council, one weigher and inspector-in-chief of lighters and other vessels employed in the transportation of stones, gravel,

<sup>1</sup> Chapter 52 of the General Statutes.

<sup>2</sup> The ordinances respecting boats and lighters are those of April 14, 1853; June 24, 1853; April 10, 1854; December 31, 1854; February 18, 1857; and March 28, 1860.

sand, and other ballast, and three assistant weighers and inspectors, who shall severally hold their offices for one year and until others are chosen in their places, and shall severally be removable at the pleasure of the city council. They shall also be severally sworn to perform faithfully the duties of their office.

chosen annually, and be sworn.  
March 28, 1860.

SECT. 2. The weigher and inspector-in-chief shall give bond to the city of Boston in the sum of one thousand dollars, with sureties to be approved by the board of aldermen, conditioned for the faithful performance of the duties of his office, and for the accounting for all money received by him by virtue thereof.

Weigher and inspector-in-chief to give bond.  
March 28, 1860.  
See *post*, p. 47.

SECT. 3. It shall be the duty of the weigher and inspector in chief to remain in the office, required to be kept by the weighers and inspectors, during such hours of every business day as the weighers and inspectors are required to keep their office open; to receive all orders for the services of weighers and inspectors; to depute the assistant weighers and inspectors to perform such services; to keep true and full accounts of the official transactions of the weighers and inspectors, and of all money received and expended by them by virtue of their office, and to report the same quarterly to the city council in January, April, July, and October.

Duty of weigher and inspector-in-chief.  
March 28, 1860.  
See § 17.

SECT. 4. It shall be the duty of the assistant weighers and inspectors to perform, under the general direction of the weigher and inspector-in-chief, all such services as weighers and inspectors of ballast and vessels are required to perform by the laws of the commonwealth and this ordinance of the city not herein especially required to be performed by the weigher and inspector-in-chief. They shall also each day account for and pay over to the weigher and inspector-in-chief all fees received by them for their services as weighers and inspectors; and such fees, after deducting the necessary expenses of the office therefrom, shall be divided each week equally between the weigher and inspector-in-chief and the three assistant weighers and inspectors.

Duty of assistant weighers and inspectors.  
March 28, 1860

SECT. 5. It shall be the duty of the weighers and inspectors to give a certificate, in such form as is hereinafter provided, to the owner or vendor of all the stones, sand, gravel, or other ballast

Duty of weighers and inspectors.  
June 24, 1853.

June 24, 1853. inspected under the provisions of this ordinance, and to keep an account of all articles inspected in a book, which shall always be kept open to the inspection of owners, vendors, or purchasers of stone, sand, gravel, or other ballast sold by weight.

Lighters, &c.,  
to be marked.  
April 14, 1853.

SECT. 6. Lighters and other vessels employed in the transportation of stones, gravel, or sand, or other ballast, shall be marked on the stem and stern post with a good and sufficient iron bolt, driven through said stem and stern post, and clinched. From the centre of the head of said bolt, all other marks shall take their distance in feet, inches, and parts of inches as the distance may require, from the centre of the head of the said stationary bolts to the lower edge of the other marks, which marks shall be as follows, namely, light-water marks not less than four inches in length and one inch and a half in breadth: and every four tons above said light-water marks, legibly cut or cast in figures of 4, 8, 12, 16, 20, and so forth, up to the full capacity of the lighter or vessel, and said figures shall express the weight which such vessel is capable of carrying, when the lower part of the respective numbers aforesaid shall touch the water, and shall be fastened on the stem and stern post of each lighter or vessel with sufficient nails not less than one inch in length; and other marks shall be set on the stem and stern post of every lighter or vessel between every two marks, that the tonnage of the same may be distinguished by a regular progression of two tons.

Weighers and  
inspectors to  
furnish marks  
and nails when  
requested, and  
keep account of  
distance of  
marks, and give  
certificates  
thereof.  
April 14, 1853.

SECT. 7. Every such weigher and inspector shall furnish all the requisite marks and nails when thereto requested, and shall cause all such lighters and other vessels to be weighed and marked in conformity with the provisions of the preceding section: and during the time of so weighing and marking, all the persons on board of such lighter or vessel shall be stationed between the bulkhead and the fore chains thereof. The weigher shall keep a correct account of the distance of each mark from the centre of the head of the stationary bolts, in feet, inches, and parts of inches, in a book to be kept for that purpose, and shall give a certificate thereof, expressing the distance, as aforesaid, to the master of every such lighter or vessel weighed and marked as aforesaid.

SECT. 8. In taking the tonnage of every such lighter or vessel, a deduction may be made, after such vessel shall have discharged its loading, of one ton for each and every ton the light-water marks may be under water.

Deduction may be made of one ton for every inch.  
April 14, 1853.

SECT. 9. Every person, on board of any such lighter or vessel, who shall not keep within the bounds of the bulkhead and fore chains during the time of taking her marks, unless in case of absolute necessity, shall forfeit a sum not exceeding fifty dollars for each offence.

Penalty for not keeping within certain bounds while marks are taken.  
April 14, 1853.

SECT. 10. Such lighters or vessels shall have their marks examined each year in the month of June by some one of the said weighers and inspectors, and if the marks agree with their former certificates, such weigher and inspector shall certify the same accordingly. Otherwise he shall keep such certificates in his possession, to be used as evidence against the master or owner of such vessel in any prosecution under any statute of the commonwealth or ordinance of the city of Boston; and such lighter or vessel shall be weighed again. For the services required by this section the weigher and inspector shall receive one dollar and fifty cents.

Marks to be examined annually. Duty of weigher and inspector in such examination.  
His fees.

SECT. 11. All stones, gravel, sand, or other ballast brought to the city of Boston by water and sold by weight to be delivered at any place within the said city of Boston, or into any vessel in the harbor of said city shall be inspected by the weighers and inspectors appointed by the city of Boston; *Provided*, that this section shall not apply to sand sold for building purposes, unless the purchaser thereof shall request an inspection.

Stones, gravel, ballast, &c., to be inspected.  
April 10, 1854.  
Feb. 18, 1857.  
*Proviso.*

SECT. 12. In any case of the sale by weight of stones, gravel, sand, or other ballast, to be delivered at any place in the city of Boston, or into any vessel in the harbor of said city, it shall be the duty of one of said weighers and inspectors to go on board of the lighter or other vessel containing the same, and inspect the marks of such lighter or other vessel, before and after the delivery of such stone, gravel, sand, or other ballast; and the person having charge of such lighter or other vessel shall before such delivery, trim the same so as to make said lighter or other vessel swim at equal marks at stem and stern, if so required by the weigher and inspector, and shall pump all the water out;

Mode of inspection.  
April 10, 1854.  
Feb. 18, 1857.

Penalty for wilfully hindering any weigher and inspector.  
April 10, 1854.  
Feb. 18, 1857.

and in case any person shall wilfully hinder any weigher and inspector acting under this ordinance from going on board such lighter or other vessel, or shall begin to deliver therefrom the stones, gravel, sand, or other ballast sold by weight, before such lighter or other vessel shall be trimmed to swim at equal marks, when so required by the weigher and inspector, and the water pumped out, he shall forfeit a sum not exceeding one hundred dollars for every such offence.

Penalty for delivering stones, &c., without inspection, or for altering or counterfeiting marks or certificate.  
April 10, 1854.  
Feb. 18, 1857.

SECT. 13. Every person who shall deliver stones, gravel, sand, or other ballast sold by weight, when an inspection of the same is required by this ordinance, from any lighter or other vessel, which shall not have been weighed, marked, and inspected, as is provided herein, or which shall not have been weighed and marked under previous laws or ordinances, or shall alter or counterfeit the marks or certificate of any lighter or other vessel, as aforesaid, shall forfeit a sum not exceeding three hundred dollars for every offence.

Fees for inspecting weight of stones, ballast, &c.  
April 10, 1854.  
Feb. 18, 1857.

SECT. 14. The fees for inspecting the weight of stones, sand, gravel, or other ballast, shall be three cents for every ton inspected and delivered, which shall in all cases be paid by the vendor of the same, and shall be repaid to him by the vendee.

Fees for weighing lighters, &c.  
April 14, 1853.

SECT. 15. Every weigher and inspector appointed as aforesaid, shall be entitled to receive, from the owner or master of each lighter or other vessel, weighed and marked by him as aforesaid, the following fees, to wit: twenty cents for every ton of such vessel, and four dollars for furnishing marks, nails, and bolts, and other necessary articles, and fastening the same, and giving the certificate. *Provided*, that no lighter or other vessel which has been once weighed and marked according to law, by the weigher of the city of Boston, shall be subject to any charge for a second weighing or marking, unless it shall appear that her former weight or marks are incorrect or have been changed; and all such lighters or vessels shall be subject to the examination and inspection of every weigher or inspector, without charge, for the purpose of ascertaining whether their weight and marks are correct or have been altered.

Proviso.

SECT. 16. The accounts to be kept by said weighers and inspectors, and the certificates to be given to the owners or vendors of stone, sand, gravel, or other ballast, as described in the preceding sections, shall specify the name of the vendor, the kind of ballast, sand or gravel, or other stone, the weight and the deduction of light-water marks, the amount of fees received, and the date of certificate.

Accounts of  
weighers and  
inspectors,  
what to specify.  
April 14, 1853

SECT. 17. The weighers and inspectors appointed as aforesaid shall keep an office, and keep the same open from sunrise to sunset, Sundays, Public Fast, Thanksgivings, the anniversary of American Independence, and other holidays, excepted, with liberty to close the same from seven to eight o'clock in the forenoon, during the months of April, May, June, July, August, and September, and from eight to nine o'clock during the other six months, and from one to two o'clock in the afternoon through the whole year.

Office hours of  
weighers and  
inspectors.  
April 14, 1853.

SECT. 18. Every owner or master of any such vessel who shall neglect to have the same weighed, marked, and examined, according to the provisions of law or this ordinance, or who shall remove any marks or alter his certificate, shall forfeit a sum not exceeding three hundred dollars for every offence.

Penalty on  
owner, &c., for  
neglecting to  
have vessels  
weighed, &c.  
April 14, 1853.

SECT. 19. Every such weigher and inspector who shall be guilty of placing any such mark, contrary to the provisions of this ordinance, or who shall give a false certificate, shall forfeit a sum not exceeding three hundred dollars for every offence.

Penalty on  
weigher for  
placing false  
marks, &c.  
April 14, 1853.

SECT. 20. The master of any lighter or vessel that has ballast for sale, shall, on arrival, report himself to the office of the inspector.

Master of  
lighter to re-  
port his arrival.  
April 14, 1853.

SECT. 21. The master of any lighter or vessel that has stones, sand, gravel, or other ballast for sale, shall produce for examination the certificate of marks and measurements of his vessel whenever the same shall be demanded by the inspector, and in case of neglect or refusal to produce them he shall forfeit a sum not exceeding fifty dollars.

to produce  
certificates  
when de-  
manded, under  
penalty.  
April 14, 1853.

SECT. 22. No officer or agent of the city of Boston shall purchase any stones, gravel, sand, or other ballast for said city, or make any contract therefor, or accept the delivery of the same, unless the same shall have been, or before the delivery

No officer of  
city to purchase  
stones, &c.,  
unless.  
April 14, 1853.

April 14, 1853. thereof shall be, weighed and inspected according to the provisions of this ordinance, and a certificate thereof given as is hereinbefore provided; and no bill against the city, arising out of or connected with any such purchase, shall be approved or allowed by any committee, passed by the auditor or paid by the treasurer, unless the said certificate shall accompany the bill for the same.

Who shall not  
be a weigher  
and inspector.  
April 14, 1853.

SECT. 23. No person who is owner or agent, in whole or in part, of any lighter or vessel, or who has any interest therein, having stones, gravel, sand, or other ballast for sale, shall be chosen, or shall continue to be, an officer under this ordinance.

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### BONDS OF CITY OFFICERS.<sup>1</sup>

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|---|---|
| <ol style="list-style-type: none"> <li>1. What officers give bonds. Pen-</li> <li>2. Form and conditions of bonds.</li> <li>3. Bonds of those officers that make</li> </ol> | <ol style="list-style-type: none"> <li>4. Annual examination of the suffi-</li> <li>5. City clerk to provide suitable</li> <li>6. Who to have custody of bonds</li> </ol> |
|---|---|
- alty of bonds.  
How approved, &c. Effect of  
death or insolvency of any surety.  
contracts, purchases, or sales in  
behalf of the city.

### ORDINANCE.<sup>2</sup>

SECTION 1. The several officers named below shall give bond to the city of Boston, with sufficient sureties, as follows, to wit:—

What officers  
give bonds.  
Penalty of  
bonds.  
July 17, 1860.

The auditor of accounts, in the penal sum of five thousand dollars; the chief of police, five thousand dollars; the city clerk, five thousand dollars; the city registrar, five thousand dollars; the city treasurer, one hundred thousand dollars; the

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<sup>1</sup> By the city charter, § 37, the city council "may require of all persons intrusted with the collection, custody, or disbursement of public moneys, such bonds with such conditions and such sureties, as the case may in their judgment require."

<sup>2</sup> An ordinance in relation to the bonds of city officers, passed July 17, 1860.

harbor master, two thousand dollars; the weigher and inspector- July 17, 1860.  
in-chief of lighters, &c., one thousand dollars; the superintendent of Faneuil Hall Market, ten thousand dollars; the superintendent of health, ten thousand dollars; the superintendent of public buildings, five thousand dollars; the superintendent of public lands, five thousand dollars; the superintendent of sewers, two thousand dollars; the superintendent of streets, five thousand dollars; the water registrar, five thousand dollars.

The sureties on the bond of the city treasurer shall be severally liable only for the sum for which in the bond they agree to hold themselves liable; the sureties on the other bonds shall be jointly and severally liable for the whole penalty of the bond.

Liability of  
sureties.  
Ibid

SECT. 2. The form and conditions of the bond given by each officer, shall correspond with and be applicable to the duties to be performed by such officer; shall be such as the city solicitor shall approve; and the sureties on each bond, and the bond itself, shall be approved by the board of aldermen. The bond of each of said officers hereafter elected, except the city clerk, shall be executed, approved, and delivered before the officer enters upon the duties of his office. In case of the decease or insolvency of any of the sureties on the bond of any of said officers, given as aforesaid, the officer who has given such bond, shall immediately give a new bond with sufficient sureties, as hereinbefore provided; and if such officer shall fail to give such new bond within a reasonable time after notice to do so, it shall be a sufficient cause for removal from office.

Form and con-  
ditions of  
bonds. How  
approved, &c.  
Ibid.

Effect of death  
or insolvency of  
any surety.  
Ibid.

SECT. 3. In the bond of any of the said officers whose duty requires him in behalf of the city to make contracts, or purchases, or sales, there shall be a condition inserted in substance as follows: "that he will not directly nor indirectly, for himself or others, or by others in trust for him or on his account, have any interest or concern in any contract, or agreement, or purchase, or sale, made by him in behalf of the city."

Bonds of offi-  
cers, making  
contracts, &c.  
in behalf of the  
city.  
Ibid.

SECT. 4. Each year in the month of June there shall be appointed a joint committee, consisting of two members of the board of aldermen, and three of the common council, whose duty it shall be to examine the bonds of the aforesaid officers,

Annual exami-  
nation of the  
sufficiency of  
bonds.  
Ibid.

July 17, 1860.

and report upon the sufficiency of the same; and in case any bond is found insufficient, and a new sufficient bond is not given and approved, in accordance with the provisions of this ordinance, within thirty days after notice from said committee, the city council, upon the facts being reported to them, may declare such bonds insufficient; and if the officer who has given such bond so found to be insufficient and who has failed to give the new bond required, is elected by the city council, they may remove him from his office, and proceed to fill the vacancy.

City Clerk to  
provide blanks  
for bonds.  
Ibid.

SECT. 5. It shall be the duty of the city clerk to provide from time to time suitable blanks for the bonds of the said officers, and to furnish the same free of charge, to the said officers, when requested.

Custody of  
bonds.  
Ibid.

SECT. 6. The city treasurer shall have the custody of the bond of the auditor of accounts; all the other bonds shall be kept in the custody of the auditor of accounts.

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## BOUNDARY LINES.

### STATUTES, &c.

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| <ol style="list-style-type: none"> <li>1. Line between Boston and Roxbury.</li> <li>2. Ratification of the line agreed upon between Boston and Roxbury.</li> <li>3. Line between Boston and Roxbury declared.</li> <li>4. Line between Boston and Roxbury modified.</li> <li>5. Line between Boston and Roxbury altered.</li> <li>6. Further altered.</li> <li>7. Further altered. Board of aldermen of Boston to cause monuments to be erected, &amp;c.</li> <li>8. Boundary between Roxbury and Boston further altered.</li> <li>9. Boundary between Boston and Roxbury further altered.</li> </ol> | <ol style="list-style-type: none"> <li>10. Annexation of part of Dorchester to Boston (South Boston).</li> <li>11. Lots of land to be set apart for public use in South Boston.</li> <li>12. Selectmen authorized to lay out streets in South Boston. Provisoos.</li> <li>13. Thompson's Island annexed to Boston. Provisoos.</li> <li>14. Line between Boston and Brookline. Suffolk and Norfolk counties. Proviso as to wooden buildings.</li> <li>15. Land annexed to ward No. 6.</li> <li>16. Part of Dorchester annexed.</li> <li>17. Streets to be laid out.</li> <li>18. Line between Boston and Chelsea.</li> </ol> |
|---|---|

10. If a person makes oath before a justice of the peace or police court that he suspects, or has probable cause to suspect, that a house or other building is unlawfully used as and for a common gaming-house, for the purpose of gaming for money or other property, and that idle and dissolute persons resort to the same for that purpose, such justice or court, whether the names of the persons last mentioned are known to the complainant or not, shall issue a warrant commanding the sheriff, or his deputy, or any constable, to enter into such house or building, and there to arrest all persons who are there found playing for money or otherwise, and also the keepers of the same, and to take into their custody all the implements of gaming as aforesaid, and to keep said persons and implements so that they may be forthcoming before some court or magistrate, to be dealt with according to law; and whoever is there found so playing, shall forfeit for every such offence a sum not exceeding fifty dollars.

Common gaming houses to be entered and parties arrested.  
G. S. 85, § 8.  
11 Met. 79.

#### RULES AND REGULATIONS.<sup>1</sup>

ORDERED, That the city clerk be directed to issue licenses to such keepers of billiard saloons and bowling alleys, as shall be approved by this board, on the terms and conditions prescribed by law, and also on condition that the several keepers of such saloons and alleys shall pay therefor the sum of five dollars for one alley or billiard table, and three dollars for each alley or billiard table more than one, which is kept under the ownership or control of one individual.

License, how granted.  
Sept. 24, 1860.

<sup>1</sup> Rules and regulations relating to bowling alleys and billiard saloons, passed by board of aldermen September 24, 1860.

## BRIDGES.

## STATUTES, ETC.

1. Incorporation of Dover Street (South Boston) Bridge; length, cost, when opened, &c.
2. Proprietors authorized to transfer to city. To be toll free.
3. Transfer to city; made a highway; rebuilt.
4. Federal Street (Boston Free) Bridge incorporated. Authority to build bridge, &c.
5. Obligations imposed upon the corporation; to devolve on city government when they assume the care of the bridge.
6. Surrender of Free Bridge to city.
7. City authorized to maintain wharves or piers on both sides of the Free Bridge. Proviso.
8. Penalty for injury to bridge, &c.
9. Right to use wharves, &c., to cease when, &c.
10. Wharves, &c., not to be within forty feet of other wharves, &c.
11. Mount Washington (Avenue) Bridge incorporated. Power to build free bridge, avenue, and street and railroad track.
12. City empowered to take the rights of the corporation on terms to be agreed upon.
13. Application to city to build bridge, &c.; action of city.
14. City authorized to build bridge, street, &c.; contracts with corporation and Boston Wharf Co.
15. Bridge and street accepted; new authority to corporation.
16. Eastern Avenue Corporation incorporated.
17. Powers of the corporation.
18. Obligations of the corporation.
19. Under whose direction avenue, &c., to be built; to be toll free.
20. Corporation revived; when to be organized; avenue to be built in five years.
21. Location of western portion changed. New location to be made in one year.
22. Portion of avenue to be solid. City may grant aid to the corporation. Draws, &c., how constructed.
23. Petitions to city for new avenue to South Boston, &c.
24. Chelsea Point Bridge incorporated, &c. Authorized to take toll.
25. City authorized to purchase Chelsea Point Bridge.
26. Highway authorized to be laid out over said bridge, &c.
27. Chelsea Street (Free) Bridge incorporated, &c.
28. Highway to be laid out over Chelsea Free Bridge, &c. Bridge how maintained. Draw.
29. Meridian Street (East Boston Free) Bridge incorporated. Power to build free bridge from Chelsea to East Boston.
30. Materials, &c. Draw to be opened on demand. Penalty, &c.
31. Corporation liable for damage to travellers, &c.
32. City authorized to purchase and to construct piers, &c. Purchase by city.
33. Charles River Bridge.
34. Warren Bridge.
35. West Boston Bridge; Hancock Free Bridge.
36. Canal Bridge.
37. Western Avenue (Milldam).

## ORDINANCE.

1. Names of bridges, &c.
2. Superintendents to be appointed, &c.
3. Duties of superintendents.
4. Assistant superintendents.
5. Penalties for injuring bridges, &c.
6. Repealing clause.

DOVER STREET BRIDGE.<sup>1</sup>

1. By an act passed March 6, 1804, William Tudor, Gardiner Greene, Jonathan Mason, and Harrison Gray Otis, and those who should become their associates, were made a corporation under the name of "The Proprietors of the Boston South Bridge," with power to construct a bridge from the southwest-  
Incorporation of Boston South Bridge. 1803, 113.  
 erly part of Boston to Dorchester Neck. The bridge was immediately built, 1551 feet in length, and at a cost of \$56,000; and was opened for public travel October 1, 1805. The proprietors were authorized by their charter to collect tolls from those using the bridge, and were required to pay five cents a ton to each loaded vessel of above twenty tons register measure passing through the draw, for the term of seventy years, at the expiration of which period the franchise was to be surrendered to the commonwealth. The provision for payment to vessels passing the draw was repealed in 1830.

2. By the act of June 23, 1831, after the Boston Free  
Proprietors authorized to transfer the franchise and materials to the city of Boston. 1831, 71, § 1.  
 Bridge had been built, and the Boston South Bridge was greatly diminished in value in consequence thereof, the proprietors of the Boston South Bridge were authorized to sell to the city of Boston the franchise and materials of their bridge, to have and to hold the same to the said city and its successors forever; *provided*, that no toll or duty should ever be exacted or paid for  
To be toll free.  
 any travel over said bridge, or passing the draw of the same, and the said city should always be held liable to keep said bridge and draw in good repair, and to raise the draw of said bridge, and afford all necessary and proper accommodation to vessels that have occasion to pass the same by night or by day, and should keep the said bridge sufficiently lighted. By the same act, the proprietors were authorized to surrender their franchise if the city of Boston should not, before September 15, 1831, pay them such sum as should be agreed upon, and receive a transfer. The city council, by a vote passed October 20, 1831, ordered the sum of \$2,500 to be paid for the franchise and materials of the bridge; but this offer was not accepted by the corporation.

<sup>1</sup> Formerly Boston South Bridge. See Ordinance, sect. 1, *post*.

Transfer of  
Boston South  
Bridge to the  
city.  
City Records,  
vol. X. pp. 78,  
97.

3. On the 12th of March, 1832, the joint committee of the city council upon the subject was authorized to agree with the proprietors of the Boston South Bridge for the purchase of their franchise, for a sum not exceeding \$3,000. On the sixteenth day of the same March, the proprietors were authorized by an act of that date, to discontinue the bridge as a passway, and to take up and remove the materials between that time and August first of that year, unless the city of Boston before the first day of May of that year should pay them such sum as should be agreed upon for a sale and transfer of the franchise and materials to the city. On the 2d of April the joint committee reported that the proprietors offered to sell for a sum not less than thirty-five hundred dollars; and recommended that the offer be accepted. This offer was accepted by the city council, and the bridge was made a public highway. A deed was executed accordingly, dated April 19, 1832, in consideration of \$3,500, conveying to the city of Boston and its successors "all that the franchise and also all the materials of the Boston South Bridge, together with the buildings, rights, wharves, and real estate, of the said corporation, and every part and parcel thereof, whatsoever the same may be, and wheresoever situate, with all the privileges, appurtenances, and immunities of every description to the granted premises and any part thereof in any wise appertaining,"—"subject, nevertheless, always to all the provisoes, terms, duties, conditions, and tenure in the aforesaid acts of the said commonwealth set forth and expressed." The flats acquired by this purchase were sold by the city April 1, 1844, for \$7,241.75.

Records of Suffolk deeds.  
Lib. 360, fol. 50.

In 1858, the bridge was repaired and rebuilt by the city at an expense of \$60,000.

#### FEDERAL STREET BRIDGE.<sup>1</sup>

Boston Free  
Bridge corporation.

4. At a general meeting of citizens March, 1824, called upon petition of the inhabitants of South Boston, a vote was passed (2487 in the affirmative, and 779 in the negative), requesting

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<sup>1</sup> Formerly "Boston Free Bridge." See Ordinance, sect. 1, *post*.

the city government to petition for liberty to build a new bridge to South Boston, to remedy the great inconvenience of the circuit over the South Bridge into the city. In February, 1825, the city of Boston was authorized by law to build a new bridge from or near Sea Street, to the newly-made land at South Boston, but the city council, May 30, 1825, deemed it inexpedient to build the bridge in its corporate capacity; and the bridge was not then built.

Federal Street Bridge.

City Records, Vol. III. p. 185.

By the act of March 4, 1826, Nathaniel Whittemore, Noah Brooks, Cyrus Alger, William Wright, and others, were made a corporation by the name of The Boston Free Bridge corporation. The corporation was authorized to build a free bridge across the channel from or near Sea Street in Boston to the newly-made land at South Boston, and nearly in the direction of the Dorchester Turnpike, and to erect a wharf or pier on each side of said bridge, near said draws, for the accommodation of vessels passing through said bridge.

Authority to build a bridge 1825, 147, §§ 1, 2.

5. It was further enacted that no toll or duty should ever be exacted or paid, for any travel over said bridge, or passing the draws of the same; and that said corporation should always be held liable to keep said bridge and draws in good repair, and to raise the draw of said bridge, and afford all necessary and proper accommodation to vessels that should have occasion to pass the same by night or by day, and should keep said bridge sufficiently lighted; and if any vessel should be unreasonably delayed or hindered in passing said draw, by the negligence of said corporation or their agents, in discharging the duties enjoined on them by that act, the owners or commanders of such vessels should recover reasonable damage therefor, of said corporation, in an action on the case, before any court proper to try the same: *Provided*, that whenever the city government of Boston should assume the care and obligations of keeping said bridge in repair, lighting the same, and providing facilities for raising said draw or draws, as aforesaid, then the obligations imposed on said corporation to that effect should be annulled, and the same should devolve on the said city government; in which case the damages mentioned in this section should be sued for, before any court proper to try the same, in either of the counties of Middlesex or Essex.

Obligations imposed upon the corporation. Ibid. § 3.

Obligations to devolve on city government, when they shall assume the care of bridge.

Surrender of  
the Free Bridge,  
&c. to the city  
of Boston.  
City Records,  
vol. IV. p. 191.  
Ibid. vol. V.  
p. 44.

Ibid. vol. 6,  
p. 262.

Ibid. p. 306.

Records of Suffolk  
deeds.  
Lib. 331, fol. 13.

City of Boston  
authorized to  
maintain

6. By the same act the city was authorized to build the bridge, if the city council should determine within three months so to do. The city council voted that it was inexpedient to undertake the project. On the 5th of February, 1827, the city council passed a resolve that it would be expedient for the city to accept said bridge upon such terms and conditions as should be required by the city council. The proprietors then undertook the work, and in June, 1828, offered the bridge to the city. On the 11th of August, 1828, a committee was appointed by the city council, with full power to accept from the Boston Free Bridge corporation the surrender of the free bridge, with its abutments, on the compliance by the corporation with the terms and conditions prescribed, and to submit all matters in dispute to arbitration. The committee reported October 7, 1828, that they had submitted the same to the arbitration of Loammi Baldwin, Samuel Hubbard, and Willard Phillips, Esquires, who had made an award; and that the requisite deeds had been delivered on the second of October, and the sum of sixteen hundred and seven dollars paid to the city by the corporation, upon which delivery and payment the obligation of the care and superintendence of the bridge and streets devolved upon the city, by force of said award. By the deed of the corporation, which was executed by Francis J. Oliver, the president, on September 26, 1828, pursuant to a vote of the corporation, passed September 24, the Boston Free Bridge corporation surrendered and conveyed the said bridge and abutments, wharves, &c., to the city of Boston, upon the terms and conditions on which the said city agreed to accept the same, by the resolve of February 5, 1827; and also assigned to the city a deed from Gardiner Greene, dated August 21, 1828, and a deed from John T. Apthorp and others, dated August 1, 1828, and conveyed to the city all the lands and flats and rights and privileges acquired thereunder.

The bridge was afterwards completed by the city, it having cost the proprietors, up to this period, about \$28,000. In 1857, it was rebuilt and widened at an expense of \$13,000.

7. By a subsequent act, the city of Boston was authorized to construct and maintain such wharves or piers, on either or both sides of this bridge, as shall be necessary for the preservation

and safety of said bridge, *provided, however*, that the said wharves or piers shall not extend in width from the sides of said bridge more than twenty-five feet.

wharves, &c.  
on both sides  
of the bridge.  
1830, 121, § 1.

8. If any person shall wilfully do any injury or damage to said bridge, said wharves or piers, or shall disturb or hinder the said city in the occupation of said wharves or piers, for the purpose aforesaid, the person so offending shall forfeit and pay for each offence a penalty not less than fifty dollars, nor more than one hundred dollars, to the use of the commonwealth, to be recovered by indictment, or information in any court of competent jurisdiction, and such person so offending shall be further liable to answer in damages to the city of Boston, *provided*, that nothing in this act shall be construed as intending to impair or affect the lawful rights of any person whatsoever.

Penalty for injury to bridge, &c.  
Ibid. § 2.

See *Harbor*,  
§ 71, *post*.

9. Whenever the wharves or piers erected, or which shall be erected by the authority of the said act, shall be used or improved for any other purpose or purposes than those therein specified, all right and authority to maintain them shall cease, and be void.

Right to use wharves, &c., shall cease, in case, &c.  
Ibid. § 3.

10. No part of the wharves or piers, which the city of Boston is authorized to construct by virtue of the act last cited, shall be maintained within the distance of forty feet of any wharf or pier which shall have been or may hereafter be lawfully constructed by any individual or individuals.

Wharves, &c. not to be within forty feet of other wharves, &c.  
1831, 46.

#### MOUNT WASHINGTON BRIDGE.

11. By an act passed April 28, 1853, Benjamin T. Reed, Deming Jarves, Eben Jones, and their associates and successors, were incorporated as the Mount Washington Avenue corporation, and were authorized and empowered to construct a pile bridge, not exceeding seventy feet in width, from a point between Wales's Wharf and Foundry Wharf, on Sea Street, in Boston, across Fore Point Channel, to the harbor line as established by the act of March 17, 1840, with a suitable draw and draw piers, which are subject to be altered and widened at the expense of the corporation and its assigns, as the legislature may from time to time require. The said corporation were also

Corporation authorized to construct a bridge.  
1853, c. 255,  
§§ 1, 2.

May construct

avenue and  
street.  
1853, 255, §§ 3, 4,  
8, 9, 10, 15.

empowered to build a solid avenue, not over eighty feet wide, and to be provided with convenient draws and sluiceways from the easterly end of the bridge, over the flats of the shore owners, within the line of private rights, parallel with West Broadway, to a point in I Street, continued, and thence easterly to the uplands owned by the city; and also a street, not over seventy feet in width, from the westerly end of the bridge to Sea Street; and to construct and maintain, under the direction of the mayor

Railroad track.

and aldermen, a double railroad track, for horse power only, through the whole, or any part of the avenue, bridge, and street, to Sea Street, and thence to the Boston and Worcester Railroad. The corporation were required, before commencing the construction of the bridge, to give bonds, with satisfactory sureties, to the attorney-general of the commonwealth, in the sum of ten thousand dollars, that the draw shall be properly raised until the bridge be transferred to and accepted by the city. The street, bridge, and avenue are to be open for public travel, free of toll; and the act was to be void unless the bridge, street, and avenue were completed in three years from its passage.

To be toll free.

City of Boston  
empowered to  
take and hold  
all the rights  
of the corpora-  
tion on terms,  
&c.,  
Ibid. § 7.

12. The city of Boston, by vote of the mayor and aldermen, were empowered by the act to take and hold all the rights and powers granted to said corporation, on such terms as could be agreed upon between said city and said corporation, and to construct and maintain, or maintain after they are constructed, the said street, bridge, and avenue; and in case of such transfer, the city is subjected to the same duties as are imposed by the act upon the corporation.

Application to  
city to build  
bridge, &c.  
Action of city.  
City Records,  
Vol. xxxi. p.  
715.

13. Upon application by the corporation to the city for aid to build the bridge, on the 15th of December, 1853, a resolve passed the city council declaring it to be the duty of the mayor and aldermen to lay out a street from Sea Street to the proposed avenue, whenever the Mount Washington Avenue corporation will construct said avenue, or give bonds that said avenue and bridge shall be constructed pursuant to their charter. Upon a further application by the corporation that the city would take measures to open the said street from Sea Street to the end of the bridge, on the westerly side of Fore Point Channel, the city council, on the 29th of December, 1853, passed an order that

Ibid. Vol.  
xxxi. p. 815.

the mayor be authorized to execute an agreement with the corporation that the city will lay out and open a new street on the westerly side of Fore Point Channel, to connect said proposed bridge with Sea Street when the said bridge and avenue shall have been completed, or when the said bridge shall have been completed, and said corporation shall have given security, satisfactory to the mayor and aldermen, that the said avenue shall be completed; *provided* the amount to be paid by the city shall not exceed \$60,000.

14. On petition of the corporation for further action under the authority above granted, the mayor was authorized, on the 4th of August, 1854, to contract with the Mount Washington Avenue corporation that the said corporation shall construct, within three years, the avenue from Granite Street to I Street, and transfer all their right, title, and interest in the same to the city; and that the city shall have authority, under said corporate power, to construct the bridge, avenue, and street, by such parties as they may select for the purpose; and on the same day orders were passed for the mayor to execute a contract with the Boston Wharf Company to build the street, bridge, and avenue described in the charter of the corporation, within one year, for the sum of \$60,000; the said company to release Granite Street to the city, and to allow the city rights of drainage into the sea. By an instrument dated August 5, 1854, the city and the Mount Washington Avenue corporation made a contract substantially as above, the corporation excluding in express terms the personal liability of its officers and members. By another instrument, dated August 7, 1854, executed by the city and the Boston Wharf Company, the two parties agreed to do what was required of them respectively, according to the terms of the above order.

15. The bridge and street having been completed were accepted by the board of aldermen, April 30, 1855. But the avenue from Granite Street to I Street being still unfinished, the corporation was authorized, May 21, 1855, to complete the same within three years, and to transfer to the city of Boston such parts of their avenue, street, and bridge as have been, or may from time to time hereafter be constructed, and before the com-

Mount Wash-  
ington Bridge.

City authorities  
to build bridge,  
&c.  
City Records,  
vol. xxxii. pp.  
529, 538, 555.

See § 11.

Bridge and  
street accepted.  
Ibid. vol. xxxiii.  
p. 251.

1855, c. 424,  
§§ 1, 2.

1855, 424, §§ 1, 2. pletion of the whole avenue, as the board of aldermen may by vote accept, and the parts so transferred may be taken, held, and maintained by the city. On the 30th of May, 1855, a vote was passed to pay the Boston Wharf Company \$60,000 for the bridge, avenue, and Granite Street, as constructed by said corporation, and on the same day the money was paid to the Boston Wharf Company. On the 13th of May, 1857, the time for constructing and completing the unfinished portion of its avenue, between Fore Point Channel and its easterly terminus in South Boston, was extended two years from the time then allowed by law. March 14, 1858, the city engineer certified that the bridge and draw across Fort Point Channel had been built according to the contract with the Boston Wharf Company. The avenue from Granite Street to I Street remains unfinished to this day.

New authority  
to corporation.  
1857, 145.

#### EASTERN AVENUE CORPORATION.

Eastern Ave-  
nue Corpora-  
tion.  
1852, 148, § 1.

16. By the act of April 24, 1852, Robert Rantoul, Jr., Samuel S. Perkins, Benjamin T. Reed, Samuel Leeds, Otis Rich, John P. Monks, Joseph W. Ward, their associates and successors, were made a corporation by the name of the "Eastern Avenue Corporation."

Powers of the  
corporation.  
Ibid. §§ 2, 3, 4.

17. The corporation was authorized to construct an avenue of solid structure, one hundred feet wide for a street and sidewalks, commencing at L Street in South Boston, within the boundaries of the city institutions, and running thence in a northwesterly direction one hundred rods from high-water mark, or to riparian line; the avenue to be provided with proper draw or draws and sluiceways. It was also empowered to construct a pile bridge, not over one hundred feet in width, with stone piers one hundred feet wide, and not less than four hundred feet apart, with suitable draw or draws; commencing at the northwesterly end of the solid avenue above described, and running thence in a direct line to the foot of Summer Street. None of the piers can be placed in Fore Point Channel; the southerly side of the bridge where it crosses the commissioners' line on the easterly side of said channel, must be twenty-one hundred feet from the angle in said commissioners' line, and the bridge where it crosses said

channel shall not exceed sixty-six feet in width, and the corporation may purchase or otherwise take any land necessary to make a street fifty feet wide from the westerly terminus of the bridge to Summer Street; the portion of the bridge or avenue which crosses the flats must be parallel to West Broadway. The draw or draws or sluiceways the legislature may change and widen at the expense of the corporation or its successors.

18. Before commencing the structures the corporation must give bond, with satisfactory sureties, to the attorney-general, in the penal sum of \$50,000, that they shall be completed in all respects to the satisfaction of the commissioners hereafter named, and kept in good repair for public travel, and that the draw or draws shall be properly raised for all necessary demands of navigation until such time as the said structures may be accepted by the city of Boston, which city shall be held to all the duties, liabilities, and restrictions of the said corporation. The bond shall also be holden as security for the payment of all damages, to individuals arising from taking land for, or in consequence of, the construction of the bridge, street, and avenue.

1852, 148, §§ 2, 3, 4.

Obligations of the corporation. Ibid. § 7.

19. The avenue, bridge, street, draws, and sluiceways must be built under the direction and to the satisfaction of three commissioners to be appointed by the governor and council, and to be paid by the corporation; and the corporation must keep the same in good repair, and tend the draws. The bridge, street, and avenue must be free for public travel, and unless completed within five years the act would be void.

The avenue, &c. to be built under direction, &c.; to be free. Ibid. §§ 5, 6, 8.

20. By the act of April 6, 1859, the corporation was revived, and the parties named in the former act then surviving were authorized to call a meeting to organize the corporation anew, with all the powers conferred by said act; *provided*, that the meeting be called and the corporation organized within six months from the passage of the act; and *provided, also*, that the avenue, bridge, and street, named in said act, be completed within five years from the said date; and *provided, further*, that the rights of parties to damages occasioned by the laying out and construction of said avenue, bridge, and street, and the remedies therefor, and for securing the payment of the same, shall in all respects be the same as are by law provided in rela-

Corporation revived. 1859, 251.

When to be organized.

Avenue, &c. to be built in five years.

tion to damages occasioned by the laying out and constructing railroads.

Location of western portion changed. 1860, 71.

21. By the act of March 14, 1860, so much of the former act as required the bridge and avenue to run in a direct line to the foot of Summer Street was repealed, and the corporation was authorized so to change the location of their bridge and avenue that they may run in a direct line either to Drake's Wharf or to Russia Wharf, opposite Congress Street, or to any point between said wharves; the new location to be within the commissioners' lines, and to be made by the corporation, and approved by the mayor and aldermen within a year from the passage of the act; the provisions of the act not to conflict with the rights of the commonwealth. No location was made and approved by the mayor and aldermen within the year.

Portion of structure may be solid. 1861, 79, §§ 1, 2.

22. By the act of March 20, 1861, the provisions of the act of 1860, chapter 71, were extended to January 1, 1862; and it was further provided that so much of the avenue as shall be built within the commissioners' line, established May 25, 1853, for solid structure, may, with the consent of the mayor and aldermen, be built solid; and said city of Boston is hereby authorized to grant aid to said corporation in such manner and upon such conditions as the said city may deem expedient;

City may grant aid to the corporation.

Draws, &c. how constructed.

*provided*, said avenue shall be constructed with suitable draw or draws, and proper sluiceways, which draw or draws the legislature may change and widen at the expense of the corporation or its successors.

Petitions to city for new avenue to South Boston, &c.

City Records, vol. xxxviii. p. 888.

23. During the year 1860 there were petitions to the city council for a new avenue to South Boston, to be laid out from Summer or Congress Streets; and there was a remonstrance against the same. The joint committee to whom the matter was referred, reported December 13, 1860, that "the subject was one of much magnitude, and the necessity for a new avenue has been ably represented to the committee," but being unable to give the matter all the consideration it deserved, they recommended its reference to the next city council; and it was so referred.

In 1861 a new joint committee was appointed, who reported, September 30, 1861, in favor of the construction of the avenue, and that work should be then commenced on a portion of it. Various amendments were offered to the resolves reported by the committee; and, the opinion of the city solicitor having been given to the effect, among other things, that the city had no legal right to build the avenue, they were finally passed December 10, 1861, in substance, that the public convenience required that the Eastern Avenue, running from the foot of L Street to the vicinity of Summer Street, should be constructed, and that the mayor be authorized to apply to the legislature to grant authority to the city council to build the whole or any part of said avenue; and such application was duly made to the legislature.

Eastern Avenue.  
Action in 1861.  
City Records,  
1861, vol. xxxix.  
p. 594.  
City Doc. 58.  
City Doc. 73.  
City Records,  
vol. xxxix. p.  
736.

By the act of April 28, 1862, the provisions of the act of 1860, chapter 71, were extended to March 1, 1863; and the authority to the city of Boston to grant aid to the corporation, was enlarged, so that the city could render such aid by building said avenue, or any part thereof, or otherwise. By the same act the corporation was authorized to transfer its franchise and all its corporate rights to the city, and the city was empowered to accept the same; but the city was forbidden to pay any compensation for such transfer; and upon such transfer, the city would have all the powers and privileges, and be subject to all the duties, restrictions, and liabilities appertaining to the said corporation, except that city would not be required to give the bond mentioned in section eighteen. If such transfer is made to the city, notice thereof is to be given by the city to the governor of the commonwealth; and the time of location is to be extended for a further period of two years, that is, to March 1, 1865. The avenue shall be located with the approbation of, and be built according to specifications approved by, the commissioners<sup>1</sup> appointed under the resolves of 1862, chapter 88, in

Same subject.  
1862, 163.

Ibid. § 3.

<sup>1</sup> The resolve authorized the governor "to appoint three commissioners, whose duty it shall be to devise and report a general and economical system for the care and preservation of the harbors of the commonwealth, and the use and disposal of the flats therein belonging to the commonwealth, in such manner as shall preserve and improve said harbors, and protect the public interests in the same."

1862, 163, § 4.

relation to the harbors and flats of the commonwealth. When the city has received the transfer, it may discharge all the duties incumbent upon it on account thereof, by the city council of said city, or by any other agency which the city council shall appoint; and when the avenue shall have been built, the board of aldermen of said city may lay out the same as a street or highway.

Rights and  
franchise of  
corporation  
transferred to  
the city.  
City Doc.,  
1862, No. 60.

In May, 1862, the papers in relation to the proposed construction of the Eastern Avenue, were taken from the files, and referred to a joint special committee, with instructions to consider the present position of that question, and to report upon the most expedient course to be pursued by the city in regard to the matter. This committee reported, August 11, 1862, certain orders that the committee be authorized to construct a portion of the avenue, on the South Boston side, at an expense of not over \$60,000; and that arrangements be made with the corporation for the construction of the avenue, by transfer, or otherwise, as the city solicitor might deem proper. For these orders new ones were substituted, which passed October 31, 1862, and which empowered the committee to make all necessary arrangements with the corporation, under the direction of the city solicitor, for the transfer to the city, without compensation, of the franchise and power to build said avenue. The committee were also authorized to construct a sea-wall on the sea side of so much of the Eastern Avenue as lies between the shore of South Boston on the city lands at L Street and the riparian line described in chapter 148 of the acts of 1852; *provided*, that the expense shall not exceed \$5,000, to be withdrawn from the reserve fund. In pursuance of this authority, the committee took from the corporation a sufficient deed of "its franchise, all its corporate rights, and all its privileges and immunities of every description, which it is authorized by the statutes" to transfer to the city of Boston. This deed was duly accepted by the city, January 2, 1863. Up to July, 1863, nothing had been done toward the construction of the sea-wall.

## CHELSEA POINT BRIDGE.

24. By the act of April 1, 1835, Joseph Burrill, Joseph Belcher, and John W. Tewksbury, were incorporated as the proprietors of Chelsea Point Bridge, with power to build within three years a free bridge not less than twenty feet wide across the creek between the westerly side of Pulling Point, in Chelsea, and the easterly side of Belle Isle, in Boston. It is 570 feet in length, was built at a cost of \$1,100 and was opened for travel in the fall of 1839.

Chelsea Point  
Bridge incorpo-  
rated, &c.  
1835, 100.

By an act passed March 24, 1843, the proprietors of said bridge were authorized to collect certain tolls therein set forth, for passage over said bridge, said privilege to continue for ten years from April 1, 1843. It was provided that "all scholars while going to and from school shall be permitted to pass free of toll."

Authorized to  
take toll.  
1843, c. 91.

25. By an act passed April 17, 1849, the city of Boston was authorized and empowered to purchase the franchise of Chelsea Point Bridge, with all the rights and property incident thereto.

City authorized  
to purchase  
Chelsea Point  
Bridge.  
1849, 100, § 1.

26. The mayor and aldermen of the city of Boston, as county commissioners therein, were authorized to lay out a highway over so much of Chelsea Point Bridge, and the tide waters thereat, as is within the city of Boston. That portion of the bridge was laid out as a highway July 1, 1850, and December 16, 1850, it was ordered that the sum of \$75 be paid the former proprietors of the bridge for that portion thereof. The commissioners to perform the duties of county commissioners, or those at any time thereafter holding the like authority, were authorized and empowered to lay out a highway over so much of Chelsea Point Bridge, and the tide waters thereat, as is within the town of North Chelsea; and also to lay out a highway over the tide waters between Pulling Point and the neck of land leading to Point Shirley in North Chelsea, so as to form a continuous highway from East Boston to Point Shirley.

A highway au-  
thorized to be  
laid out over  
said bridge, &c.  
Ibid. § 2.

CHELSEA STREET BRIDGE.<sup>1</sup>

Chelsea Free  
Bridge incorpo-  
rated, &c.  
1834, 30.

27. By an act of the legislature, passed March 28, 1834, Benjamin T. Reed, Amos Binney, John Henshaw, and others, were incorporated as proprietors of the *Chelsea Free Bridge*; and they were authorized to construct a free bridge, twenty-five feet in width, across Chelsea Creek, from Noddle's Island to Shurtleff's farm in Chelsea.

The bridge was 690 feet in length, cost \$8,227.76, and was opened for public travel in October, 1834. In 1835 the proprietors of the bridge conveyed the property to the trustees of the Ferry Company. In 1848 the bridge was rebuilt at a cost to the Ferry Company of \$4,678.15.

Highway to be  
laid out over  
Chelsea Free  
Bridge and the  
tide waters  
thereat.  
1849, 109, § 1.

28. By the act of April 17, 1849, the mayor and aldermen of the city of Boston, as county commissioners therein, were authorized and empowered to lay out a highway over so much of Chelsea Free Bridge, and the tide waters thereat, as are within the city of Boston; and the commissioners appointed to perform the duties of county commissioners, or those at any time thereafter holding the like or similar authority, were authorized and empowered to lay out and construct a highway over so much of Chelsea Free Bridge, and the tide waters thereat, as are within the town of Chelsea; the said bridge to be maintained with good and sufficient materials, and not less than twenty-five feet wide, with sufficient railings for the protection of passengers, and a good and sufficient draw not less than twenty feet wide, with proper piers above and below the draw, for the accommodation of vessels passing through the same.

Bridge, how to  
be maintained.

Draw.

By a resolve of the mayor and aldermen, passed May 6, 1850, so much of the Chelsea Free Bridge as is within the city of Boston, was taken and laid out as a public highway, in the way and manner that the same was then made. The portion of the bridge and road in the town of Chelsea having been permitted to get out of order, and said town having declined to repair the

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<sup>1</sup> Formerly Chelsea Free Bridge. See Ordinance, sect. 1, *post*.

same, alleging that it would be of no benefit to that town, the city of Boston, by an order of the city council, approved June 27, 1855, paid to the town of Chelsea \$8,473, on condition that said town would give a bond to the city of Boston to keep its portion of the road and bridge in good order and repair for the future, which bond was given to the city July 12, 1855, in the penal sum of \$10,000; and said bridge is now a public highway, which the two cities of Chelsea and Boston are bound to keep in repair.

Chelsea Street Bridge.

#### MERIDIAN STREET BRIDGE.<sup>1</sup>

29. By an act passed May 15, 1855, Henry D. Gardner, Morrell Cole, Watson G. Mayo, Noah Sturtevant, George W. Gerrish, Henry Jones, their associates and successors, were made a corporation by the name of the East Boston Free Bridge, and were authorized to build a free bridge across Chelsea Creek from the corner of Condor and Meridian Streets, in Boston, to Pearl Street, in Chelsea.

Bridge to be built from Meridian and Condor Streets to Chelsea. 1855, c. 335, §§ 1, 2.

30. The bridge was to be of good materials, not less than forty feet wide, with sufficient railings for the protection of passengers, with a pivot or turn-table draw with two openings each not less than sixty feet wide; which draw shall at all times, on demand, be opened for the passage of vessels that cannot pass under said bridge. A forfeiture of not more than ten or less than two dollars was provided, in case any vessel desiring to pass the bridge should be detained more than thirty minutes, payable to the owner or owners of such vessel.

Materials, width, railings, draw, to be opened on demand, &c.

Forfeiture for detaining vessel more than thirty minutes.

31. Said corporation was to be liable for all damages to travellers over the said bridge, happening through any defect in the same, in the same way and manner as the towns are liable for defects in public highways and bridges.

Corporation liable in damages, when, &c.

32. The franchise having become the property of the East Boston Company by an order of the city council, passed October 11, 1855, the city agreed to pay to the East Boston Company \$40,000 for the bridge when finished, and a joint special committee was appointed to superintend the construction of the

City authorized to purchase and to construct piers, &c. 1856, c. 109, § 2.

<sup>1</sup> Formerly East Boston Free Bridge. See Ordinance, sect. 1, *post*.

Meridian Street  
Bridge.  
1856, 109, §§ 1, 2.

Bridge pur-  
chased by city.

bridge. But the city not having authority without special legis-  
lation to purchase the bridge, by the act passed April 14, 1856,  
the city was authorized to purchase the bridge which the East  
Boston Free Bridge Company were authorized to build, and also  
any other property of said corporation, and were also authorized  
to construct such guards or piers as the safety of said bridge  
might require. The original act having contained no provision  
for the construction of such piers, the city paid \$15,000 for the  
erection of the same; and in December, 1856, the bridge having  
been completed, the sum of \$40,000, originally voted, was paid  
to the East Boston Company therefor, by the order of December  
5, 1856. The expense of building the bridge being \$1,000 more  
than the amount paid therefor, this additional sum was raised  
by subscription, and the property was then delivered to the city.  
The bridge is 1515 feet in length. It was opened for travel in  
December, 1856.

Charles River  
Bridge.

1784, 53.

1791, 62.

1827, 127.

33. Besides the bridges above named which the city of Bos-  
ton support, there are others connecting the peninsula with the  
adjacent territory, over which the city has no control and which  
it is under no obligation to maintain. The oldest of these is  
the Charles River Bridge, which was incorporated by the act of  
March 9, 1785, and was opened for travel June 17, 1786, having  
been built at an expense of about \$46,000. Its length was  
1503 feet. By their charter the proprietors were authorized to  
collect tolls for forty years, and the franchise was then to revert  
to the commonwealth. By the act of March 9, 1792, incorpo-  
rating the West Boston Bridge, the right to collect tolls was ex-  
tended to seventy years from 1785. Upon the incorporation of  
the Warren Bridge, in 1828, a bitter controversy arose between  
the corporations as to the constitutional right of the common-  
wealth to grant the charter of the Warren Bridge; and it was not  
until 1837 that the question was settled by the Supreme Court of  
the United States in favor of the commonwealth, which had then  
assumed the control and management of the Warren Bridge.  
The proprietors of Charles River Bridge, in 1836 and for several  
years after closed the bridge to public travel, leaving the draw  
open for the passage of vessels. In 1841 the legislature author-

ized the issue of \$25,000 state scrip, to be given to the proprietors of the Charles River Bridge for a conveyance to the commonwealth of the property and franchise of the corporation. By the same act tolls were imposed upon those passing this bridge, and were to be collected until, after all expenses of maintaining and repairing or rebuilding were paid, there should remain a fund of \$50,000, the income of which was supposed to be sufficient to keep both this bridge and the Warren Bridge in repair for all time; the tolls, in no event, to last more than ten years.

34. As above stated, the Warren Bridge was incorporated in 1828. The proprietors were authorized to collect tolls until they were reimbursed the cost of building the bridge and the other necessary expenses, with five per cent. interest thereon, when the bridge was to revert to the commonwealth. They were expressly limited from taking tolls for a longer period than six years. The bridge was built and opened for travel December 25, 1858. The commonwealth in 1833 assumed the control of the bridge, and tolls were received to its use until April, 1836, when the bridge was declared free. It continued free until the act of 1841, chapter 88, above mentioned, imposed tolls upon both bridges. The requisite fund of \$50,000 was raised from the tolls December 1, 1843, and both bridges were free from that date until June 1, 1854, when the income of the fund being found insufficient to sustain the bridges, and a large portion of the principal having been expended, tolls were again imposed on both bridges, to continue until sufficient was received to rebuild the Charles River Bridge and repair the Warren Bridge, and to leave in the treasury of the commonwealth a fund of \$100,000 for the future maintenance and repair of the bridges. This was accomplished in 1858, and since April 30 of that year both bridges have been free.

35. The West Boston Bridge was incorporated by the act of March 9, 1792, with the right to collect tolls for forty years, when the franchise was to revert to the commonwealth. By the act of June 30, 1792, this right was given for seventy years, and in 1807, upon the incorporation of the Canal Bridge, the privilege was granted for seventy years from that date. The bridge was built and opened for travel in 1793. By the act of April 16,

1841, 88.

Warren Bridge.  
1827, 127.1832, 170.  
1833, 219.

1854, 451.

West Boston  
Bridge.  
1791, 62.

1792, 21.

West Boston  
Bridge.  
1836, 282.

1836, the Hancock Free Bridge was incorporated, with power to construct a bridge across Charles River, from a point at or near the northwesterly end of Allen Street, in Boston, to the opposite shore of the river in Cambridge. But the grant to construct the bridge was to be void if, before June, 1, 1836, the West Boston Bridge corporation should agree to sell their bridge and franchise to the Hancock Free Bridge corporation for such sum as three disinterested men should determine; and authority was given to the corporation to make the transfer; upon the completion of which the West Boston Bridge was to be toll-free forever.

1837, ch. 163.

By the act of April 14, 1837, the Hancock Free Bridge corporation was authorized, after it had received a legal transfer of the other bridge and its franchise, to take tolls until the sum of \$80,000 should be raised, besides the expenses of maintenance and repair; the right in no event to extend beyond twelve years.

1846, ch. 146.

In 1846 a new corporation, by the same name, was established, with the same authority to build a bridge across Charles River, at the former location. It was authorized to purchase the bridge and franchise of the West Boston Bridge corporation, and also those of the Canal Bridge, at prices to be determined by three disinterested persons; and to collect tolls until the net sum of \$150,000 should be raised, if both bridges were purchased, or \$100,000 if the West Boston Bridge should alone be bought, or \$50,000 if the Canal Bridge only should be purchased, and when this sum or these sums should be received, the bridge or bridges should be toll-free forever.

1857, 257.

In 1857 the corporation was authorized to pay \$100,000 to the city of Cambridge, and thereupon that city was to assume the control and management of the bridges, and maintain them as free avenues forever. This act was accepted by the city of Cambridge, the arrangement was perfected, and February 1, 1858, the West Boston Bridge and Canal Bridge were made free.

Canal Bridge.  
1807, 88.

36. The Canal Bridge, more familiarly known as Craigie's Bridge, was incorporated by the act of February 27, 1807, the franchise to continue for seventy years, and then to revert to the commonwealth. The bridge was opened for travel in August, 1809, and continued a toll-bridge until 1858, when it became free, as related above, in the account of the West Boston and Hancock Free Bridges.

37. The Western Avenue, (Milldam,) was built by the Boston and Roxbury Mill corporation, which was incorporated by the act of June 14, 1814, the third section of which authorized the collection of tolls for passing over the road, made by the dam, bridges, and causeways; the rates to be the same as those then granted to the proprietors of West Boston Bridge. In 1856 the rates of toll were made the same as those established upon the bridges of the Hancock Free Bridge corporation.

Western Avenue.  
1814, 39, § 3.

1856, 182.

An agreement was made June 9, 1854, between the corporation and the commonwealth, by which among other things, the fee of the Western Avenue became vested in the State, subject only to the then existing rights of way and toll. The corporation also agreed that they "shall and will surrender said franchise of toll, together with all said corporation's present right of way over the Milldam and cross-dam, and over all bridges and roads, and over all bridges and roads of said roads as now constructed, connected with, or leading to either of said dams, whensoever either of the following events shall occur, viz: whenever avenue number two, on the Plan hereto annexed, shall be extended and opened as a street for public travel to the cross-dam; or whenever a strip of land, not less than one hundred and fifty feet wide, shall be made and filled to the height of the Milldam, extending from Otter Street, on the north side of said dam, as far west as the point opposite the end of the cross-dam, or extending on the south side of said dam to a point on the Milldam thirteen hundred and fifty-seven feet east of the cross-dam; or at the expiration of ten years from the first day of May, A. D. 1853; it being understood, however, that said corporation has, and shall have, liberty at any time to surrender its toll franchise to said commonwealth, or to enter into an arrangement, subject to the covenants herein contained, with any city or town within which any parts of the dam, cross-dam, bridges, or roads aforesaid are situated, for the maintenance of such parts, and that said corporation shall remain bound, as now, until such arrangement or surrender to keep said dams, roads, and bridges in good repair.

Agreement  
between corpo-  
ration and com-  
monwealth.

By the act of April 11, 1861, the commissioners on public lands are authorized to make such arrangements with the

1861, 201, § 2.

Western Avenue.  
1861, 201, § 2.

Boston and Roxbury Mill corporation, and with any cities and towns, or other corporations or parties interested, respecting a continuance of tolls on the Milldam and the roads and bridges connected therewith, the fee of which vested in the commonwealth by the above-named indenture, and more particularly specified in another indenture with said corporation of December 30, 1856, and in regard to any rights and covenants therein, and in regard to the acceptance of the same as highways by said cities and towns, as they may deem suitable and proper, and shall have authority to execute all necessary instruments to carry such arrangements into effect, subject to the approval of the governor and council; and out of any income derived from such tolls, they shall keep in suitable repair the Milldam, cross-dam, and roads and bridges connected therewith, whenever said dams, roads, and bridges shall come into the power and control of the commonwealth by virtue of the indenture of June 9, 1854, or otherwise; and any surplus, not required for such repairs shall be paid into the treasury of the commonwealth, to be kept as a separate fund for the same purposes; *provided*, that such tolls shall cease whenever the said ways and bridges are accepted and duly laid out as highways by the proper authorities, and not sooner.

#### ORDINANCE.<sup>1</sup>

Names of  
bridges, &c.  
May 11, 1857.

SECTION 1. The North Free Bridge shall be hereafter called the Federal Street Bridge; the South Free Bridge shall be hereafter called the Dover Street Bridge; the East Boston and Chelsea Free Bridge shall be hereafter called the Chelsea Street Bridge; the East Boston Free Bridge shall be hereafter called the Meridian Street Bridge, and the bridge over Fore Point Channel, connecting Mount Washington Avenue, shall be called the Mount Washington Avenue Bridge.

Superintendents to be appointed.  
Ibid.

SECT. 2. There shall be elected annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of both branches of the city council, a superintendent of each of the bridges named in the preceding section. Each of said superintendents shall hold his office for one year from the

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<sup>1</sup> An ordinance relating to bridges, passed May 11, 1857.

first Monday of April in the year in which he shall be elected, May 11, 1857. and until his successor is elected and qualified. They shall be removable at the pleasure of the city council, and vacancies may be filled at any time for the remainder of the term. They shall receive such compensation as the city council may from time to time determine.

SECT. 3. It shall be the duty of each superintendent to take charge of the bridge of which he is chosen superintendent, by night and by day, and cause the draw thereof to be opened at all times, when required for the free passage of vessels, and to cause the same to be closed forthwith, and with all possible expedition, not permitting more than one vessel to pass at any one opening of the draw, unless the bridge shall be free of passengers while the draw is up; in which case he shall use his discretion as to the number of vessels to be permitted to pass, prior to the closing of the draw; and it shall also be within his discretion, to permit any vessel to pass through the draw, against the tide, when the wind is favorable. And each superintendent shall see that the bridge of which he is superintendent, and the abutments and wharves connected therewith, are at all times in a safe and satisfactory condition, and free from all incumbrances; that the lamps thereon are well lighted, that the railing and planks are in good order, and the snow and ice removed from the sidewalks in winter; subject, at all times, to the authority, control, and direction of the board of aldermen for the time being, relative to the duties hereinbefore expressed, and also relative to any other duties respecting said bridges and wharves, and the abutments connected therewith, which the said board of aldermen may, from time to time, order and prescribe.

SECT. 4. The several superintendents above named may appoint their assistant superintendents, subject to the approval of the committee on bridges, and no assistant superintendent shall be authorized to act as such until his appointment is duly certified by the committee on bridges to the board of aldermen. And said assistant superintendents shall be compensated for their services out of the salary of the superintendent whose assistant he is, unless otherwise provided by the city council.

SECT. 5. Any person or persons who shall deface, break, or injure either of said bridges or wharves, or shall unnecessarily

Duties of superintendents.  
Ibid.

Assistant superintendents.  
Ibid.

Penalties for injuring bridges, &c.

May 11, 1857,  
See *Harbor*,  
§ 71, *post*.

open or obstruct the passage of either of the draws of said bridges, or shall make fast to such bridge, guard, or pier, any vessel, scow, raft, or float, or shall allow any vessel under his charge to pass through the draw without the consent of the superintendent of such bridge, shall, upon conviction thereof, pay a fine of not less than three dollars, and not exceeding fifty dollars.

SECT. 6. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

## BUILDINGS.<sup>1</sup>

### STATUTES.

1. Livery stables not to be erected within 170 feet of any church.
2. Penalty.
3. Livery stables in maritime towns to be licensed.
4. Penalty for unauthorized erection or use of stables.
5. Wooden buildings in Boston, more than sixteen feet high, forbidden, except under certain restrictions.
6. Two or more such buildings in connection, or within three feet, shall have brick or stone wall between them. Proviso as to neck lands.
7. Penalty. How recovered.
8. Duty of board of engineers to prosecute.
9. Further remedy.

10. City council may authorize and regulate wooden buildings in South and East Boston.
11. City council may make rules respecting snow, &c., on roofs.

### ORDINANCE.

1. Notice shall be given of intention to build, &c.
2. Numbers of buildings. Penalty for numbering contrary to directions.
3. Cellar doors and platforms to be kept in good repair.
4. Cellar doors to be lighted when open at night.
5. Defacing buildings, &c.
6. Wooden buildings permitted in South and East Boston, under certain limitations. Brick partition walls to be put up, in certain cases.

1. No building shall be erected within the city of Boston, and used and improved as a stable for the taking in and keeping horses or chaises or other carriages, upon hire or to let, commonly called livery stables, within one hundred and seventy feet of any church or meeting-house erected for the public worship

Livery stables  
not to be erected  
within 170 feet  
of any church.  
1810, 124, § 1.  
1 Gray, 163.

<sup>1</sup> For buildings belonging to the city, see *Public Buildings*. For certain provisions respecting bow-windows, cellar doors, steps, &c., see *Streets*. See, also, *Nuisances*.

of God,<sup>1</sup> without the consent in writing of the proprietors of such church or meeting-house, or of the religious society or parish worshipping therein, and the consent of the mayor and aldermen of the city of Boston.

1810, 124, § 1.  
1860, 109.

2. For any offence against the preceding provision, the owner or owners, keeper or keepers of such building, shall forfeit and pay the sum of one hundred dollars for every calendar month during which the same shall be so used and improved, to be recovered by action of debt, one half thereof to enure for the use of the poor of the city of Boston, the other half thereof to him or them who shall sue for the same.

Penalty.  
1810, 124, § 2.

3. Whoever occupies or uses a building in any maritime place for a livery stable, except in such part thereof as the mayor and aldermen or selectmen shall direct, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time.

Livery stables in maritime towns to be licensed.  
G. S. 88, § 31.  
1 Gray, 163.

4. Whoever erects, occupies, or uses a building for a stable for more than four horses, in any city or town, except in such part thereof as the mayor and aldermen or selectmen direct, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time. And the supreme judicial court or any one of the justices thereof, either in term time or vacation, may issue an injunction to prevent such erection, occupancy, or use, without such direction.

Penalty for unauthorized erection or use of stables.  
G. S. 88, § 32.

5. No wooden building of more than sixteen feet in height, from the ground or foundation thereof, shall be erected in the city of Boston, except under the following limitations and restrictions, namely: the dimensions of such building on the ground not to exceed twenty-five feet by fifty feet; or, being in any other proportion, not to cover more than twelve hundred and fifty superficial feet of land; the walls not to exceed twenty feet in height from the under side of the sills, which sills may be three feet six inches above the level of the street, to the eaves

Wooden buildings in Boston, more than sixteen feet high, forbidden, except under certain restrictions.  
1835, 139, § 1.  
(Accepted by citizens, May 13, 1835. Boston Records of general meetings after 1830, p. 6.)

<sup>1</sup> There was a proviso in this act, respecting stables then in part erected, which proviso has ceased to be material.

1835, 139, § 1.

of the roof; the roof, in the highest point thereof, not to rise more than thirty-two feet from the under side of the sills aforesaid, and there shall be at least one scuttle at or near the highest point of said roof.

Two or more such buildings in connection, or within three feet, shall have brick or stone wall between them.  
Ibid. § 2.

6. When two or more such two-story buildings as are provided for in the preceding section shall be erected in connection, or within three feet of each other, or within three feet of any other wooden building, more than sixteen feet in height, there shall be an entire brick or stone wall between them, commencing from the foundation of said wall, and carried to the height of twelve feet above the level of the street, at least twelve inches in thickness, and the residue of said wall shall be at least eight inches in thickness; and in case any openings are made through said walls, the same shall be secured against fire by iron doors applied to such openings; *provided*, that such brick or stone walls may be dispensed with by consent, in writing, of the mayor and aldermen of the city of Boston, on what are commonly called the neck lands, in said city.<sup>1</sup>

Proviso as to neck lands.

Penalty.  
Ibid. § 3.

7. If any person or persons shall violate the provisions of the two preceding sections, such person or persons, on conviction thereof, in any court competent to try the same, shall forfeit and pay for every such offence a sum not less than fifty nor more than five hundred dollars, and shall be liable to a like prosecution and penalty for each and every year after such conviction until said building or buildings, erected contrary to the provisions aforesaid, shall be removed or made to conform thereto; and the said penalties and forfeitures incurred by virtue of this act may be recovered by indictment, to the use of the city of Boston, or by an action of debt in any court competent to try the same, one half to the use of the person or persons who shall sue therefor, and the residue to the use of the said city.<sup>2</sup>

How recovered.

<sup>1</sup> The remainder of this section, as it stood in the original act, and the 5th section of the same act, were repealed by stat. 1850, c. 280, § 2.

<sup>2</sup> The chief engineer of the fire department, as such, is a very proper person to commence a suit in order to insure obedience to this law regulating the erection of wooden buildings. But under the law, (G. S. ch. 155, § 20,) requiring actions on any penal statute, brought by a person to whom the pen-

8. It shall be the duty of the board of engineers of the said city to cause suits to be commenced without delay against each and all who shall violate the provisions of the three preceding sections, and to prosecute the same to final judgment.<sup>1</sup>

Duty of board of engineers to prosecute.  
1835, 139, § 4.

9. An act passed March 27, 1847, provided, that any building thereafter erected in the city of Boston, contrary to the provisions of the four preceding sections, shall be deemed and taken to be a common nuisance; and the mayor and aldermen of the said city shall have the same power and authority to abate and remove any such building as are given to the board of health, in the tenth and eleventh sections of the twenty-first chapter of the Revised Statutes; *provided, however*, that nothing in this section shall be construed as affecting any remedies already given in the four preceding sections.

Further remedy.  
1847, 132.

10. The city council of the city of Boston may authorize the erection of wooden buildings in those parts of said city called South Boston and East Boston, upon such terms and conditions, and subject to such limitations and restrictions, as they may deem expedient.<sup>2</sup>

City council may authorize and regulate wooden buildings in South and East Boston.  
1850, 280, § 1.

11. Cities and towns may make by-laws to prevent the falling and to provide for the removal of snow and ice from the roofs of buildings, in such portions of their limits and to such extent as they may deem expedient, and may annex penalties not exceeding twenty dollars, for any violation of such by-laws by the owner of any such building or his agent having the care thereof.

By-laws concerning snow and ice on roofs of buildings.  
1863, 86, § 1.  
See, also, G. S. 19, § 13.

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alty is given, in whole or in part, to be commenced within one year next after the offence is committed, and not afterwards, the action to enforce this penalty must be brought within a year after the commission of the offence. And the offence is committed as soon as the building is erected, whether complete or not, because it is then attended with all the dangerous consequences intended to be obviated. *Barnicoat v. Folling*, 3 Gray, 134, 135.

<sup>1</sup> See note 2, p. 90.

<sup>2</sup> The stat. of 1850, c. 280, § 2, repealed stat. 1817, c. 171, §§ 1, 2, 3, 4, 5, 7, 8, 15; 1821, c. 26, 31; 1822, c. 16; 1829, c. 34; so much of stat. 1835, c. 139, § 2, as relates to South Boston and East Boston, together with § 5 of the same act.

## ORDINANCE.

Notice shall be  
given of inten-  
tion to build,  
&c.  
Nov. 14, 1833.  
July 14, 1855.

SECTION 1. All persons intending to erect or to make any alterations in the external walls of any building or buildings of any description, any part of which is to be placed upon or within ten feet of any of the public streets, squares, alleys, or lanes of the city, shall, before he or they proceed to build or erect the same, or to lay the foundation thereof or to make the said alterations, give notice in writing to the board of aldermen of such their intention, with the dimensions of the structure proposed, the materials to be used, the number of the street or precise location, and the name of the owner or owners of the land, fifteen days at least before doing any act for carrying such their intention into execution, in order that any encroachment or any other injury or inconvenience to the said public streets, squares, lanes, or alleys which might otherwise happen, may be thereby prevented, and in default thereof the city shall be discharged from all damages, of any nature whatsoever, resulting from the failure to give notice as above provided, particularly from all such damages or expenses as have been enhanced or occasioned by reason of anything done previously to, or without such notice.

Numbers of  
buildings.  
Nov. 14, 1833.  
May 16, 1850.

SECT. 2. The board of aldermen shall have power to cause numbers of regular series to be affixed to, or inscribed on, all dwelling-houses and other buildings erected or fronting on any street, lane, alley, or public court within the city of Boston, at their discretion; and shall also have power to determine the form, size, and material of such numbers, and the mode, place, succession, and order of inscribing or affixing them on their respective houses or other buildings. And any owner or occupant of any building or part of a building who shall neglect or refuse to affix to the same the number designated by the board of aldermen, or by some person by them duly authorized, or who shall affix to the same, or retain thereon more than one day, any number contrary to the direction of the said board, or person so authorized, shall forfeit and pay a sum not less than one dollar, nor more than twenty dollars, and a like sum for every subsequent offence.

Penalty for  
numbering con-  
trary to direc-  
tions.  
May 16, 1850.

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<sup>1</sup> Ordinances of November 14, 1833, of May 16, 1850, and of July 14, 1855.

SECT. 3. Whenever any cellar door or the platform thereof shall project into any of the streets, lanes, alleys, public squares, or places within the city, it shall be the duty of the owners and occupants of the buildings or estate to which the same belong to keep the same in good repair. And if at any time the said cellar doors or platforms are out of repair, so that in the opinion of the board of aldermen the safety of the inhabitants is thereby endangered, the said board are hereby authorized to notify the said owners and occupants of the fact; and if said owners or occupants neglect or refuse for the space of twenty-four hours to repair the same, the said board shall forthwith cause the same to be repaired at the expense of said owners or occupants, and said owners and occupants shall in case of such neglect or refusal as aforesaid be further liable to a penalty of not less than one nor more than fifty dollars, for each and every day that said cellar door or the platform thereof shall continue to be out of repair.

Cellar doors and platforms to be kept in good repair. Nov. 14, 1853. See *Streets*.

SECT. 4. Whenever any of the cellar doors before mentioned are open or the platforms thereof removed at any time during the night, it shall be the duty of the occupant of the cellar to which the same belongs to cause a sufficient light to be so placed that the opening of said door or removal of said platform shall at all times during the night be distinctly visible. And any person offending against the provisions of this section shall forfeit and pay a sum not less than one nor more than fifty dollars.

Cellar doors to be lighted when open at night. Ibid. See *Streets*.

SECT. 5. Any person or persons who shall be guilty of defacing any building or buildings, fence, sign, or other property in the city, by cutting, breaking, daubing with paint, or in any other way defacing or injuring the same, shall upon conviction thereof pay a fine not exceeding fifty dollars.<sup>1</sup>

Defacing buildings, &c. (See G. S. 161, § 82.)

SECT. 6. It shall be lawful to erect wooden buildings in those parts of the city called South Boston and East Boston, which shall not be more than thirty-two feet high from the ground to the highest part thereof; *provided, however*, that no wooden building except for mechanical purposes shall be erected in a range of more than fifty feet in extent, without the interven-

Wooden buildings permitted in South and East Boston, under certain limitations. May 16, 1850. See Statute, § 10. *Ante*, p. 91.

<sup>1</sup> See *Public Buildings*, Statutes, §§ 5, 6.

Brick partition  
walls to be put  
up in certain  
cases.  
May 16, 1850.

tion of a brick partition wall, of at least eight inches in thickness, such wall to extend six inches at least above the surface of the roof; and no wooden building shall be altered for a dwelling-house contrary to this provision.<sup>1</sup>

## BURNING FLUIDS.

### STATUTES.

1. Towns and cities may regulate the storage and sale of camphene, &c.

and sell camphene and burning fluid. Penalty.

2. License, how obtained.
3. License, how long to continue.
4. Fee for license.

### ORDINANCE.

1. Persons to be licensed to keep

Cities and  
towns may reg-  
ulate the  
storage and sale  
of camphene,  
&c.  
G. S. 88, § 51.

The city council of any city and the inhabitants of any town may adopt such rules and regulations as they deem reasonable in relation to the storage and sale, within the limits thereof, of camphene or any similar explosive or inflammable fluid, and may affix penalties for breaches thereof, not exceeding twenty dollars for any one offence.

### ORDINANCE.<sup>2</sup>

Persons to be  
licensed to keep  
and sell cam-  
phene and burn-  
ing fluid.  
Nov. 3, 1855.  
Penalty.

SECTION 1. No person shall keep for sale, or shall store in any building within the city of Boston any camphene or burning fluid, without a license from the board of aldermen, under a penalty of not less than one nor more than twenty dollars for any one offence.

License, how  
obtained.  
Ibid.

SECT. 2. Every person desiring to obtain a license to sell or store camphene or burning fluid in said city, shall make written application therefor to the chief engineer of the fire department, stating in said application the place or building in which he

<sup>1</sup> For buildings belonging to the city, see *Public Buildings*. For certain provisions respecting bow-windows, cellar doors, steps, &c., see *Streets*. See, also, *Nuisances*.

<sup>2</sup> An ordinance relating to camphene, passed November 3, 1855.

desires to sell or store the said articles and the manner in which he proposes to keep them, and the chief engineer of the fire department shall examine the premises and report to the board of aldermen his opinion of the safety of granting a license, and after his report the board of aldermen may act upon said application. Nov. 3, 1855.

SECT. 3. All licenses granted under the provisions of the previous section shall continue and be in force from the time of granting until the first day of April next succeeding. License, how long to continue.  
Ibid.

SECT. 4. Every person, at the time of receiving said license, shall pay therefor the sum of one dollar. Fee for license.  
Ibid.

## CARRIAGES.

## STATUTES.

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| <ol style="list-style-type: none"> <li>1. Travellers with carriages meeting, to take the right-hand side of road, &amp;c.</li> <li>2. Travellers with carriages moving in the same direction, shall pass on the left, &amp;c.</li> <li>3. Bells to be used with sleighs.</li> <li>4. Penalties, and how to be recovered. Limitation.</li> </ol> | <ol style="list-style-type: none"> <li>5. These provisions not to apply to horse railroads.</li> <li>6. Drivers of stage coaches, &amp;c., not to leave their horses without, &amp;c.</li> <li>7. Board of aldermen may make rules and orders for the regulation of carriages, &amp;c. Penalties. Fee for license. Right of city to make by-laws not impaired.</li> </ol> |
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## RULES AND ORDERS.

## HACKNEY CARRIAGES.

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| <ol style="list-style-type: none"> <li>1. Hackney carriage defined.</li> <li>2. License required.</li> <li>3. Board of aldermen may license, and revoke. Record.</li> <li>4. Fee for license. Chief of police to make quarterly payments.</li> <li>5. When license shall expire. Shall not be transferred, without, &amp;c.</li> <li>6. Who shall be liable.</li> <li>7. Neglect to take out license after it is granted.</li> </ol> | <ol style="list-style-type: none"> <li>8. Manner of marking and numbering.</li> <li>9. No other number shall be used.</li> <li>10. Carriage and horses shall not be left, unless in care of suitable person.</li> <li>11. Shall not stand in any other place.</li> <li>12. Shall not stop so as to obstruct.</li> <li>13. Driver, &amp;c., shall wear a badge.</li> <li>14. Aldermen, &amp;c., may give directions for standing and route.</li> </ol> |
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| <p>15. Rates of fare.</p> <p>16. Carriage not to be driven by a minor, unless, &amp;c.</p> <p>17. Licenses to be granted to owner or lessee only. Penalty for any other person to take out a license. Owner or lessee ceasing to be such shall surrender license.</p> <p>18. Persons prohibited from riding on the steps of any carriages or on platform of horse-car without leave of driver or conductor. Penalty.</p> | <p>28. Neglect to take out license, after it is granted.</p> <p>29. Truck, &amp;c., shall not be driven by a minor, unless, &amp;c.</p> <p>30. Number of horses to one truck, &amp;c. Proviso.</p> <p>31. Pace at which horses, &amp;c., shall go.</p> <p>32. Length of trucks.</p> <p>33. Weight of load.</p> |
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## CARRIAGES IN GENERAL.

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| <p style="text-align: center;">OMNIBUSES.</p> <p>19. Time for starting.</p> <p>20. Stopping.</p> <p>21. Receiving and carrying passengers.</p> <p>22. Shall not leave the route.</p> <p style="text-align: center;">TRUCKS, WAGONS, &amp;c.</p> <p>23. License for trucks, wagons, &amp;c.</p> <p>24. Board of aldermen may license and revoke.</p> <p>25. Fee for license. Chief of police to pay same to city treasurer.</p> <p>26. When licenses shall expire. Shall not be transferred, without, &amp;c.</p> <p>27. Who shall be liable.</p> | <p>34. Carriage shall not remain longer than five minutes, without some person, &amp;c., and not longer than fifteen in any case. Exceptions.</p> <p>35. Bells required in certain cases.</p> <p>36. Carriages shall not stop so as to obstruct foot passengers, &amp;c.</p> <p>37. Manner of holding reins. Pace at which horses, &amp;c., shall go.</p> <p>38. Driver shall remain near, &amp;c. Shall not snap or flourish whip.</p> <p>39. How trucks, &amp;c., shall be placed. Loading and unloading.</p> <p>40. Cart, &amp;c., to be placed near sidewalk. Not more than one range of carts, &amp;c.</p> <p>41. Horses, &amp;c., not to be fed in streets, &amp;c. Certain vehicles to be removed.</p> |
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## STATUTES.

- Travellers with carriages meeting, to turn to right.  
G. S. 77, § 1.  
1 Pick. 345.  
23 Pick. 201.  
8 Met. 213.  
11 Met. 404.  
12 Met. 415.  
10 Cush. 495.  
2 Gray, 181.
- Travellers with carriages moving in the same direction, to pass on the left.  
G. S. 77, § 2.
- Bells to be used
1. When persons meet each other on a bridge or road, travelling with carriages, wagons, carts, sleds, sleighs, or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the travelled part of such bridge or road, so that their respective carriages or other vehicles may pass each other without interference.
  2. The driver of a carriage or other vehicle passing a carriage or other vehicle travelling in the same direction shall drive to the left of the middle of the travelled part of a bridge or road; and if the bridge or road is of sufficient width for the two vehicles to pass, the driver of the leading one shall not wilfully obstruct the same.
  3. No person shall travel on a bridge or road with a sleigh

or sled drawn by one or more horses, unless there are at least three bells attached to some part of the harness. with sleighs.  
G. S. 77, § 3.

4. Whoever offends against the provisions of the preceding sections shall for each offence forfeit a sum not exceeding twenty dollars, and be further liable to any party for all damages sustained by reason of such offence; *provided*, that every complaint therefor shall be made within three months after the offence is committed, and that every action for damages shall be commenced within twelve months after the cause of action has accrued. Penalties, and how to be recovered.  
G. S. 77, § 4.  
  
Limitation.

5. The provisions of the above sections shall not apply to horse railroads. Provisions do not apply to horse railroads.  
G. S. 77, § 5.

6. If a driver of a stage coach or other vehicle, for the conveyance of passengers for hire, when a passenger is within or upon such coach or vehicle, leaves the horses thereof without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be punished by imprisonment in the jail not exceeding two months, or by fine not exceeding fifty dollars. Drivers of coaches, &c., not to leave their horses without charge.  
Penalty.  
G. S. 100, § 36.

7. The mayor and aldermen of the city may make rules and orders for the regulation of all carriages and vehicles used either wholly or in part therein, whether with or without animal power, with penalties for violations thereof, not exceeding twenty dollars for one offence; and may receive annually one dollar and no more for each license, granted by them to a person to set up and use any carriage or vehicle within such city. Such rules shall not take effect until they have been published at least one week in some newspaper published in the city or in the county in which the city is situated. This section shall not impair the right of a city to make by-laws relating to the subject. Board of aldermen may regulate carriages, &c. Penalties. Fee for license. Right to make by-laws not impaired.  
G. S. 19, § 14.  
2 Cush. 562.

#### RULES AND ORDERS OF THE BOARD OF ALDERMEN.<sup>1</sup>

##### HACKNEY CARRIAGES.

SECTION 1. Every stage coach, cab, chariot, coachee, barouche, landau, or other vehicle, whether on wheels or runners, drawn Hackney carriage defined.  
June 27, 1855.

<sup>1</sup> Rules and regulations relating to carriages, passed by the board of aldermen April 16, 1855, June 27, 1855, October 1, 1855, December 17, 1855, and December 31, 1861.

June 27, 1855. by one or more horses, or other animal power, which shall be used in the city of Boston for the conveyance of persons for hire from place to place within said city, shall be deemed a hackney carriage within the meaning of these regulations.

License. SECT. 2. No person shall set up, use, or drive in the city of Boston any hackney carriage, for the conveyance of persons for hire from place to place within said city, without a license for such carriage from the board of aldermen, under a penalty of not less than five nor more than twenty dollars every time such carriage is used.

Board of aldermen may license and revoke. Ibid. See § 17. SECT. 3. The board of aldermen will, from time to time, grant licenses to such persons, and upon such terms as they may deem expedient, to set up, use, or drive hackney carriages for the conveyance of persons for hire, from place to place within the city, and they may revoke such licenses at their discretion; and a record of all licenses so granted shall be kept by the chief of police.

Record. Fee for license, to whom to be paid. Ibid. SECT. 4. For every license so granted there shall be paid to the chief of police the sum of one dollar for the use of the city; and he shall pay over the same to the city treasurer quarterly.

License, when to expire. Ibid. See § 17. SECT. 5. All licenses granted as aforesaid, shall expire on the first day of July next after the date thereof, and no license shall be sold, assigned, or transferred, without the consent of the board of aldermen, indorsed thereon by the chief of police.

Not assignable, unless, &c. Who shall be liable. Ibid. See § 17. SECT. 6. The person in whose name a license is taken out for a hackney carriage shall, for all the purposes of these rules and orders, be considered as the owner of the same, and liable to all forfeitures and penalties herein contained; unless upon the sale of the said carriage, notice be given to the chief of police, and the license delivered to him.

Neglect to take out license after it is granted. Ibid. SECT. 7. Any person who may be licensed as aforesaid, either as owner or driver of any hackney carriage, who shall continue to use any such carriage, and shall neglect or refuse to take out and pay for his license within thirty days after notice that the same has been granted, shall be liable to a fine of not less than one dollar, and not more than twenty dollars, for each and every day thereafter that he or they shall so refuse or neglect to take out said license.

Manner of SECT. 8. Hackney carriages shall be marked and numbered

in the manner following, viz: Every hack or landau which stands on the owner's premises shall be marked on the outside and upon each side on the sill or rocker immediately below the doors, with the number of the license, with white, gilded, or plated figures, in the Arabic character, of not less than one and a half inches in size, on a dark ground, or with a dark figure of the same kind and size upon a light ground, and no other figure or device within four inches of the same. Stage coaches shall be numbered in like manner on the top rail of the doors. Omnibuses shall be numbered in like manner on the lower panel of the door. Cabs shall be numbered in like manner on the centre of the top panel of the door, immediately below the glass. Every hackney carriage, when driven or used in the night-time, shall have fixed upon some conspicuous part of the outside thereof two lighted lamps, with plain glass fronts and sides, and having the number of the license of such hackney carriage in figures of at least one and a half inches in size, of the like character, painted with black paint upon the sides and front of each of said lamps, in such a manner that the same may be distinctly seen and known when the same may be standing or driving. The name of the owner and driver and the number of the license, together with the rates of fare, shall be printed on a card and placed in all hackney carriages, in the most conspicuous place, for the information of passengers. And if any owner or driver of any hackney carriage shall use or drive any such carriage, or permit the same to be used and driven without complying with the foregoing requisitions, or use or drive, or permit to be used or driven, any such carriage in the night-time without its lamps being lighted and numbered as aforesaid, said owner and driver shall be liable to a fine of not less than two nor more than twenty dollars for each offence.

marking and  
numbering.  
June 27, 1855.

Lamps to be  
numbered and  
lighted.  
Ibid.

SECT. 9. No owner or driver of any hackney carriage shall use or suffer such carriage to be used with any other number upon the same than that assigned by the board of aldermen; nor with such number placed on any other part of such carriage than that designated in the preceding section, under a penalty of not less than five nor more than twenty dollars every time such carriage is used.

No other num-  
ber shall be  
used.  
Ibid.

Carriage and horses shall not be left, unless in care of suitable person.  
June 27, 1855.

SECT. 10. No owner, driver, or other person having charge of any licensed hackney carriage, shall leave such carriage and horses when harnessed, in any street, square, lane, alley, or public place, unless in the care of some suitable person, under a penalty of not less than five nor more than twenty dollars for every such offence.

Shall not stand in any other place.  
Ibid.

SECT. 11. No owner, driver, or other person having charge of any hackney carriage, shall stand with such carriage in any square, lane, alley, or public place within the city, to be employed, other than the stand assigned to such carriage by the board of aldermen, under a penalty of not less than two dollars nor more than twenty dollars for each offence.

Shall not stop so as to obstruct street, &c.  
Ibid.

SECT. 12. No owner, driver, or other person having charge of any hackney carriage, shall stop his carriage abreast of any other carriage in any street, square, lane, alley, or public place within the city, nor stop his carriage in any street, square, lane, alley, or public place, so as to obstruct the same, or the sidewalk, flagstone, or crossing thereof, under a penalty of not less than two nor more than twenty dollars for each offence.

Driver, &c., shall wear a badge.  
Ibid.

SECT. 13. Every owner, driver, or other person having charge of any hackney carriage for which a license has been given to stand in any street or square, at any railroad depot, steamboat landing, theatre, museum, or other place of public entertainment, shall at all times, when driving or waiting for employment, wear a badge on his hat or cap with the number of his carriage thereon, in brass or plated figures of not less than one inch and a half in size, and so placed that the same may be distinctly seen and read; under a penalty of not less than two nor more than twenty dollars for each offence.

Board of aldermen, may give directions for standing and route.  
Ibid.  
Commonwealth v. Robertson,  
5 Cush. 438.

SECT. 14. In any street or square, or at any theatre, museum, or other place of public entertainment, where hackney carriages attend for passengers, the board of aldermen, or any person or persons by them authorized, may give directions respecting the standing of such carriages while waiting for their passengers, and the route they shall go, when going to or leaving any such place of entertainment; and if any owner, driver, or other person having the care of any such carriage shall refuse to obey any such order or directions of the board of aldermen, or

other person or persons by them authorized, he or they shall be liable to a fine of not less than five nor more than twenty dollars for each offence. June 27, 1855.

SECT. 15. The prices or rates of fare to be taken by, or paid to the owner, driver, or other person having charge of any hackney carriage, except omnibuses and hacks, shall be as follows; that is to say, for carrying one or more adult passengers from one place to another within the city proper, thirty cents, except between the hours of 11 o'clock, P. M. and five o'clock A. M., when the rate of fare shall be fifty cents each. The prices or rates of fare to be taken by, or paid to, the owner or driver, or other person having charge of any hack, shall be as follows: for carrying one or more adult passengers from one place to another within the city proper, thirty-five cents, except between the hours of 11 o'clock, P. M. and 5 o'clock, A. M., when the rate of fare shall be fifty cents each; for carrying one or more adult passengers to or from East Boston or South Boston, in any hackney carriage, except omnibuses, seventy-five cents; for children between four and twelve years of age one half of the above sums, and for children under four years of age, when accompanied by an adult, no charge is to be made. Every owner, driver, or other person having charge of any hackney carriage, shall carry with each passenger, in addition to one trunk, a valise, a saddle-bag, carpet-bag, portmanteau, box, bundle, basket, or other article used in travelling, if he be requested so to do, without charge or compensation therefor; but for every additional trunk, or other such article as the above named, more than one, he shall be entitled to demand and receive the sum of five cents. No owner, driver, or other person having charge of a hackney carriage, or hack, shall demand or receive from any passenger any higher or greater price or rate of fare than that established by this section, under a penalty of not less than ten nor more than twenty dollars for each offence; and he shall besides forfeit his license. Rates of fare.  
April 16, 1855.  
June 27, 1855.  
October 1, 1855.

SECT. 16. No hackney carriage used for the conveyance of passengers shall be driven by a minor, unless he be specially licensed therefor by the board of aldermen, under a penalty of not less than two nor more than twenty dollars for each offence. Carriage not to be driven by a minor, unless, &c.  
Ibid.

License to be granted to owner or lessee only.  
Dec. 31, 1861.

Penalty for any other person to take out license.  
Ibid.

Owner or lessee ceasing to be such shall surrender license.  
Ibid.

Persons prohibited from riding on steps, &c., of carriage or platform of horse-car without leave.  
Penalty.  
Ibid.

SECT. 17. No license shall be granted for any hackney carriage, truck, wagon, dray, cart, hand-cart, sleigh, sled, hand-sled, or other vehicle whatsoever, for the conveyance of passengers or property for hire within the city except to the owner or lessee thereof. If any person other than the owner or lessee thereof shall take out a license for any such carriage, truck, wagon, dray, cart, hand-cart, sleigh, sled, hand-sled, or other vehicle, he shall be liable to a penalty not exceeding twenty dollars for each offence.

When any owner or lessee of such carriage, truck, wagon, dray, cart, hand-cart, sleigh, sled, hand-sled, or other vehicle, who has received a license therefor, shall cease to be such owner or lessee, he shall, within ten days after ceasing to be such owner or lessee, surrender his license to the chief of police, under a penalty not exceeding twenty dollars.

SECT. 18. Whoever shall ride upon the steps of any omnibus, or upon any hackney carriage, truck, wagon, dray, cart, sleigh, or sled, without permission of the driver thereof, or upon the platform of any horse-car, without the permission of the driver or conductor thereof, shall be liable to a penalty not exceeding twenty dollars for each offence.

#### OMNIBUSES.<sup>1</sup>

Time for starting.  
June 27, 1855.

SECT. 19. Each license of any omnibus belonging to any line may specify the time that said omnibus shall leave

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<sup>1</sup> Under the provisions of the act of 1847, c. 224, the mayor and aldermen of the city of Boston have authority to make regulations as to the use of omnibuses and stage-coaches, for the transportation of persons for hire from Roxbury to Boston and from Boston to Roxbury, while passing over and using the public streets of Boston; if, in the opinion of the mayor and aldermen, from the character of such vehicles, as to size, numbers, or mode of use, they would otherwise endanger or greatly incommode the public generally, who have occasion to use such public streets; and such regulations may prescribe certain streets as the route of travel for the vehicles mentioned in the same, and may provide for their exclusion from certain other streets; *provided* such regulations are "necessary and expedient for the due regulation," within the city of Boston, of the omnibuses and other vehicles therein specified. *Commonwealth v. Stodder*, 2 Cush. 562, (1848).

the stand, and no omnibus shall leave the stand designated June 27, 1855. for it until five minutes have elapsed after the departure of the omnibus immediately preceding, under a penalty of not less than two nor more than twenty dollars for each offence.

SECT. 20. No owner or driver of any omnibus belonging to any line shall stop his omnibus on any part of the route assigned thereto, unless called to take or to leave a passenger, and then for no longer time than may be sufficient for such passenger to take his or her seat, or to leave such carriage, under a penalty of not less than two nor more than twenty dollars for each offence.

SECT. 21. The driver of every omnibus, when passing through Washington, Court, and Hanover Streets, shall receive and leave passengers on his right side of said streets only, under a penalty of not less than two nor more than twenty dollars for each offence.

SECT. 22. No owner or driver of any omnibus shall drive his omnibus, or permit the same to be driven on any other route or streets than those that have been or may hereafter be designated and established by the board of aldermen, under a penalty of not less than ten nor more than twenty dollars for each offence.

#### TRUCKS, WAGONS, &c.

SECT. 23. Every truck, wagon, dray, cart, hand-cart, sleigh, sled or hand-sled, and every other vehicle which shall be used within the city of Boston, for the conveyance from place to place within the said city, of wood, coal, lumber, stone, brick, sand, gravel, clay, dirt, rubbish, goods, wares, furniture, merchandise, building materials, or article or thing whatsoever, whether of a like description or not, shall be licensed, as hereinafter provided, and shall have placed upon the outside, and upon each side of the same, the name of the owner and the number of the license, in plain legible words and figures, of not less than one and one half inches in size, and so that the name may be dis-

June 27, 1855. tinctly seen; and if the owner of any such vehicle shall use, or suffer the same to be used, or if any other person shall use any such vehicle without being licensed as hereinafter provided, or without having the name and number so placed as aforesaid, they or either of them shall be liable to a fine of not less than three dollars nor more than twenty dollars for each offence.

Board of aldermen may license, and revoke. Ibid. SECT. 24. The board of aldermen will, from time to time, grant licenses to such persons and upon such terms as they may deem expedient, to have a stand for, to use and to drive any such vehicle as aforesaid within the city of Boston, and they may revoke such licenses at their discretion; and a record of all licenses so granted, shall be kept by the chief of police.

Record. SECT. 25. For every license so granted there shall be paid to the chief of police the sum of one dollar for the use of the city; and the chief of police shall pay over the same to the city treasurer quarterly.

Fee for license. Ibid. SECT. 26. All licenses granted as aforesaid shall expire on the first day of July next after the date thereof, and no license of any vehicle which has a stand in any street or square shall be sold, assigned, or transferred, without the consent of the board of aldermen, indorsed thereon by the chief of police.

When licenses shall expire. Shall not be transferred, without, &c. Ibid. SECT. 27. The person in whose name a license is taken out for any such vehicle shall, for all the purposes of these orders, be considered as the owner of the same, and liable to all the forfeitures and penalties herein contained, unless, upon the sale of any such vehicle, notice be given thereof to the chief of police, and the license delivered up to him.

Who shall be liable. Ibid. SECT. 28. Any person who may be licensed as aforesaid, either as owner or driver of any of the before-mentioned vehicles who shall continue to use any such carriage or other vehicle, and shall neglect or refuse to take out his license within thirty days after notice that the same has been granted, shall be liable to a fine of not less than one dollar, and not more than twenty dollars, for each and every day thereafter that he or they shall refuse or neglect to take out said license.

Neglect to take out license after it is granted. Ibid. SECT. 29. No truck, cart, wagon, or other vehicle, used for any of the purposes mentioned in the 23d section, shall be driven by any minor unless he be specially licensed by the board of

Truck, &c. shall not be driven by a minor, unless, &c. Ibid.

aldermen as a minor; and if any owner or other person having the care of any such vehicle, shall suffer or permit an unlicensed minor to drive any such vehicle, he or they shall be liable to a fine of not less than two nor more than twenty dollars for each offence. June 27, 1855.

SECT. 30. Not more than two horses shall be harnessed to, and permitted to draw any truck or sled in or through any of the public streets, squares, lanes, or alleys of the city, and not more than three horses shall be harnessed to and permitted to draw any cart, wagon, or dray in or through any of the public streets, squares, lanes, or alleys of the city, unless in either of the above cases, for the carriage of any one single article exceeding two and a half tons in weight, and which cannot be divided, under a penalty of not less than five, nor more than twenty dollars; *provided*, that the board of aldermen may grant permission upon any special application for that purpose, for more than two horses to draw any truck or sled, and for more than three horses to draw any cart, wagon, or dray, when they may think it reasonable or necessary; *provided, also*, that four horses or other beasts may, without such special permission, be attached to and permitted to draw any wagon employed to transport loads out of the city into the country, or from the country into the city; said four horses or other beasts being yoked in pairs, or so harnessed that two shall travel abreast. Number of horses to one truck, &c. Ibid. Proviso.

SECT. 31. All drivers, and other persons having the care and ordering of any truck, cart, wagon, sled, or dray, passing in or through the streets, squares, or lanes of the city, shall drive their horses or beasts at a moderate foot pace, and shall not suffer or permit them to go in a gallop or trot; and such drivers or other persons shall hold the reins in their hands to guide and restrain such horses or beasts, or they shall walk by the head of the shaft, or wheel-horse, either holding or keeping within reach of the bridle or halter of the horse or other beast. And any person offending against either of the provisions of this section shall be liable to a fine of not less than five dollars nor more than twenty dollars for each offence. Pace at which horses, &c., shall go, Ibid. 3 Pick. 462. Thacher's Crim. Cas. 100.

SECT. 32. No truck shall be used in this city, the length whereof from the end of the shaft to the extreme end of the Length of trucks. Ibid.

side shall be greater than twenty-four feet and six inches, under a penalty of not less than five nor more than twenty dollars every time such truck is used.

Weight of load.  
Ibid.

SECT. 33. No person shall cause to be carried on any truck or cart any load the weight whereof shall exceed three tons; or on any wagon, any load the weight whereof shall exceed three tons; excepting the load which may consist of an article which cannot be divided; and any person violating either of the provisions of this section shall be liable to a fine of not less than ten nor more than twenty dollars for each offence.

#### CARRIAGES IN GENERAL.

Carriages shall not remain longer than five minutes without some person, &c., and not longer than twenty minutes in any one case. Commonwealth v. Robertson, 5 Cush. 438.

SECT. 34. No owner, driver, or other person having the care or ordering of any chaise, carryall, hackney carriage truck, cart, wagon, hand-cart, sleigh, sled, hand-sled, or any other vehicle whatsoever, new or old, finished or unfinished, with or without a horse or horses, or other animal or animals harnessed thereto, shall suffer the same to stop in any street, square, lane, or alley of this city more than five minutes without some proper person to take care of the same, or more than twenty minutes in any case; and any person so offending shall be liable to a fine of not less than three nor more than twenty dollars for each offence. But this section shall not apply to the carriages of physicians while visiting the sick, or to the vehicles of market and provision men who may stand with the same without the limits of Faneuil Hall Market, until 11 o'clock in the forenoon, at such places in the city as the board of aldermen may designate, for the purpose of vending provisions.

Exceptions.  
Dec. 17, 1855.

Bells required in certain cases.  
June 27, 1855.

SECT. 35. No carriage, or vehicle of any description, whether of burden or pleasure, shall be driven through any part of the city of Boston during any time that the snow or ice shall be upon or cover the streets, squares, lanes, or alleys of the said city, unless there shall be three or more bells attached to the horse or horses, or some part of the harness thereof, under a penalty of not less than three nor more than twenty dollars for each offence.

Carriages shall

SECT. 36. No owner, driver, or other person having the care

of any truck, cart, wagon, sled, or other vehicle, whether used for burden or pleasure, shall stop or place such vehicle at or near the intersection of any street, lane, or alley, in such manner as to cross the footing or flagstone or prevent foot passengers from passing the street, lane, or alley in the direction or line of the footway or flagstones on the side of such street, lane, or alley, under a penalty of not less than three nor more than twenty dollars; and any person who shall have so placed any such vehicle as aforesaid, and shall not immediately on the request of any foot passenger cause the same to be removed, or who shall absent himself so that such request cannot be immediately made and complied with, shall be liable to an additional penalty of not less than two nor more than ten dollars.

not stop so as  
to obstruct foot  
passengers, &c.  
June 27, 1855.

SECT. 37. No person shall sit or stand in or upon, or near any carriage or other vehicle, or on any beast harnessed thereto, with intent to drive the same, unless he or she shall have strong reins or lines fastened to the bridle of such beast, and held in his or her hand; nor shall any person suffer or permit any such beast to run, gallop, trot, pace, or go at any rate exceeding seven miles to the hour, through any street, lane, square, or alley of the city; and if any person shall violate either of the provisions of this section he shall be liable to a fine of not less than five dollars nor more than twenty dollars for each offence.

Manner of hold-  
ing reins.  
Ibid.

Pace at which  
horses, &c.,  
shall go.  
Ibid.  
3 Pick. 462.

SECT. 38. Every driver of any truck, wagon, or other vehicle, within the city of Boston, shall remain near to such vehicle while it is unemployed, or standing in the streets or squares of the city, unless he shall be necessarily absent therefrom in the course of his duty and business, and shall so keep his horse or horses, and carriage or other vehicle, as that the same shall not obstruct the said streets or squares or other public passages in any other manner than is allowed by law, or the ordinance of the city council, or orders of the board of aldermen. And no driver of any carriage or other vehicle while waiting for employment either at any stand which is or may be appointed for such carriages or other vehicles, respectively, or in the public streets or squares of the city, shall snap or flourish his whip. And any person who shall violate either of the provisions of this section

Driver shall re-  
main near, &c.  
Ibid.

Shall not snap  
or flourish his  
whip.  
Ibid.

shall be liable to a fine of not less than two dollars nor more than twenty dollars for each offence.

How trucks,  
&c., shall be  
placed.  
June 27, 1855.

SECT. 39. No truck, cart, or other vehicle shall be so placed in any street within the city, by the owner, driver, or other person having the care and ordering thereof, as to prevent the passing of any other truck, cart, or carriage of any description, unless it be for a reasonable time not exceeding six minutes, for the loading or unloading of heavy articles, the weight of which in any several parcel or package shall not be less than six hundred pounds. And for the loading or unloading of any dirt, bricks, stone, sand, gravel, or of any articles whether of the same description or not, the weight of which in any one package shall be less than five hundred pounds, no truck, cart, wagon, sleigh, sled, or other vehicle shall be wholly or in part backed or placed across any street, square, lane, or alley, or upon any flag-stones or crossings of the same, or upon any sidewalk or foot-way of the same, but shall be placed lengthwise with, and as near as possible to, the abutting stone of the sidewalk or foot-way, and any owner or driver, or other person having the care of any such vehicle, violating either of the provisions of this section, shall be liable to a fine of not less than five dollars nor more than twenty dollars, for each offence.

Loading and  
unloading.  
Ibid.

Cart, &c., to be  
placed near  
sidewalk.  
Ibid.

SECT. 40. Every owner, driver, or other person having the care and ordering of any cart, truck, wagon, or sled, or other vehicle, shall place his horse and cart, truck, wagon, or sled or other vehicle lengthwise, as near as possible to the post or abutting stone of the foot or sidewalk of the street in which he shall stand; and no more than one range of carts, trucks, or other vehicles, shall stand in streets not more than thirty feet wide, and not more than one range on each side in streets which are of a greater width than thirty feet; and in squares and other open places they shall be arranged by the said owners, drivers, or other persons, in conformity to the directions of the board of aldermen, or of any person by them appointed; and any person who shall violate the provisions of this section, or shall neglect or refuse to obey such directions as aforesaid, shall be liable to a fine of not less than three nor more than twenty dollars.

Not more than  
one range of  
carts, &c.  
Ibid.

Horses, &c.,

SECT. 41. No owner or driver of any hackney carriage, truck,

wagon, dray, cart, sleigh, sled, or any other vehicle whatsoever, with horses or any other beasts harnessed thereto, shall bait or feed any such beast in any street, lane, square, or alley of the city, under a penalty of not less than two dollars, nor more than twenty dollars for each offence.

All vehicles, without horses harnessed thereto, must be removed from their stands and from the streets during the night and on Sundays, otherwise they will be removed by the city at the expense of the owners.

not to be fed in streets, &c.  
June 27, 1855.  
Certain vehicles to be removed.  
Ibid.

## CHELSEA.

## STATUTES.

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. Conditions of the connection between Chelsea and Boston.</li> <li>2. Duration of the act, provided for. County property to remain vested in Boston.</li> <li>3. Act to be accepted by the town of Chelsea.</li> <li>4. Chelsea incorporated as a town;</li> </ol> | <ol style="list-style-type: none"> <li>North Chelsea; Winthrop; made a city.</li> <li>5. In Suffolk, county property to belong to the city of Boston.</li> <li>6. Chelsea not to be assessed for county purposes.</li> <li>7. County matters in Chelsea, North Chelsea, and Winthrop.</li> </ol> |
|---|--|

1. By an act of the legislature, passed June 23, 1831, it was provided that the connection which by law then subsisted between the city of Boston and the town of Chelsea should continue upon the following conditions, that is to say: "First, the said town of Chelsea shall, by good and sufficient deeds, assign and release to the said city of Boston all right, title, and interest in and to all the real estate and personal estate then belonging, or any time heretofore deemed and taken to belong to the county of Suffolk, and shall also relinquish to the said city of Boston the exclusive care, management, jurisdiction, and regulation of the court houses, jails, house of correction, and all other lands, buildings, and establishments deemed county property, or in which the said county of Suffolk claims or has claimed

Conditions of the connection between Chelsea and Boston.  
1831, 65, § 1.

1831, 65, § 1. or exercised any care, management, jurisdiction, or regulation, as aforesaid. Secondly: that the said city of Boston shall be at liberty to apply from time to time to the legislature for any alterations in the laws establishing and regulating county, municipal, or police courts, or respecting the administration of justice, which the said city of Boston shall think expedient, without any let, hindrance, interference, or claim of right by the said town of Chelsea, before the legislature or otherwise: *provided*, always, that some court or courts within the said city of Boston should have jurisdiction in all matters and things which, in relation to the town of Chelsea or the inhabitants thereof, were cognizable by the court of common pleas or by the court of sessions in the county of Suffolk before the passing of the 'Act to regulate the administration of justice within the county of Suffolk, and for other purposes,' passed February 23, 1822.<sup>1</sup> Thirdly: that the said town of Chelsea may at any time apply to the legislature to be set off from said county of Suffolk to any other county, without opposition from the said city of Boston."

Duration of the act, provided for:  
Ibid. § 2.

2. The second section of the same act provided that the said act should continue and be in force, so far as respects the connection aforesaid between the said city of Boston and the said town of Chelsea for the space of twenty years, and thence afterwards until the same should be altered by the legislature, unless the said town of Chelsea should in the mean time apply to the legislature, and be set off as aforesaid: *provided, however*, that the rights of property which should be acquired by the said city of Boston, under that act, should nevertheless remain forever vested in the said city of Boston.

County property to remain vested in Boston.

Act to be accepted by the town of Chelsea.

Ibid. § 3.

Act accepted, Sept. 5, 1831.

3. By the third section, the act was to take effect whenever the said town of Chelsea, at any town meeting legally assembled, should accept the same; and from the time of such acceptance all rights of property of the town of Chelsea in and to all the estate, real and personal, of the county of Suffolk should cease and determine and be vested in the said city of Boston. The act was accepted at a meeting of the inhabitants of the town of Chelsea, duly notified and warned, on the 5th of September, 1831.

Chelsea incor-

4. At the May session of the general court, in 1738, "all the

lands within the town of Boston, heretofore called Winnisimmet, Rumney Marsh, and Pullen Point," were "erected into a township by the name of Chelsea." The town was divided in 1846, and a portion of its territory was made a separate town by the name of North Chelsea. In 1852, a portion of North Chelsea was incorporated as the town of Winthrop. Chelsea was made a city in 1857. In 1856 an act was passed re-annexing Chelsea to Boston; but it was made conditional upon its acceptance by Chelsea and Boston. In Chelsea the vote was in favor of annexation, but it was otherwise in Boston.

porated as a town.  
North Chelsea.  
1846, 127.  
Winthrop,  
1852, 53.  
City of Chelsea.  
1857, 18.  
1856, 141.

5. By the General Statutes, all the real estate and personal estate, in the county of Suffolk, which, on or before the twenty-third day of June, in the year one thousand eight hundred and thirty-one, belonged, or was deemed and taken to belong to the said county, shall belong to, and be vested in the city of Boston; and the city of Chelsea and towns of North Chelsea and Winthrop shall have no right, title, or interest therein.

In Suffolk,  
county prop-  
erty to belong  
to the city of  
Boston.  
G. S. 17, § 3

6. In the assessment of county taxes for the county of Suffolk, the city of Chelsea, and the towns of North Chelsea and Winthrop, are not to be taxed for county purposes.

Chelsea not to  
be assessed for  
county pur-  
poses.  
G. S. 11, 30.

7. The voters of Chelsea, North Chelsea, and Winthrop, vote with Middlesex County in the election of county commissioners; and the county commissioners of Middlesex County have and may exercise in the above-named places the authority of county commissioners in relation to highways and other matters, except as is otherwise provided by law.

County matters  
in Chelsea,  
North Chelsea,  
and Winthrop.  
G. S. ch. 10, §§ 6,  
7, 14; ch. 17,  
§ 34; ch. 43,  
§ 80.

## CHIMNEYS AND CHIMNEY SWEEPERS.

## ORDINANCE.

1. Chimneys to be examined and repaired. Penalty. Defective chimneys may be abated.
2. Sweepers of chimneys to be licensed. Penalty.

3. Foul chimneys, how to be examined. Fires not to be kept in them. Penalty.
4. Penalty for burning chimneys, &c. Proviso.

ORDINANCE.<sup>1</sup>

Chimneys to be  
examined and  
repaired.  
Dec. 28, 1825.

Penalty.

Defective chim-  
neys may be  
abated.

SECTION. 1. The board of aldermen, upon complaint made to them, or upon their knowledge and view of any defective chimney or other fireplace within this city shall, from time to time, take effectual care that the same shall be examined and inspected; and, when in their opinion the safety of the city requires it, shall order the same to be immediately amended or repaired if the same can be properly done; otherwise, to be taken down and demolished. And if the owner or owners of such defective chimney or fireplace shall wilfully neglect or refuse to amend, repair, or take down the same, the said owner or owners shall forfeit and pay a sum not less than one nor more than twenty dollars; *provided*, that such owner or owners shall have been served with an order in writing from the board of aldermen to amend, repair, or take down the said defective chimney or fireplace, (as the case may be,) duly certified by the city clerk; an attested copy of which order, made and certified by the said city clerk, shall be served upon such owner or owners, by any person appointed for that purpose by the said board. And the board of aldermen, for the time being, shall have full power and authority to order and direct, and they are hereby required to cause, such defective chimney or fireplace to be taken down and abated as a common nuisance; and the owner or owners of such defective chimney or fireplace shall in such case bear, satisfy, and pay the whole expense and charge of abating such nuisance, and of taking down and removing such defective chimney or fireplace.

<sup>1</sup> An ordinance for the regulation of chimneys and chimney sweepers, passed December 28, 1825. An ordinance establishing a fire department, &c., passed June 4, 1850, § 26.

SECT. 2. The board of aldermen are authorized and directed to appoint and license, from time to time, suitable persons to be sweepers of chimneys in this city, who, together with their apprentices, and others by them employed, shall wear such badges as the board shall appoint and direct, and whose wages and compensation for their work and service in sweeping chimneys shall not exceed the rates which have been fixed and appointed by the mayor and aldermen, or may hereafter be fixed and appointed by the board of aldermen. And if any person who shall not be appointed and licensed as aforesaid shall presume, either by himself or by his apprentices, or others by him employed, to undertake the sweeping of any chimney in this city, excepting such as are in his own occupation, every such person shall forfeit and pay a sum not less than one dollar, nor more than twenty dollars, for every offence of which he shall be duly convicted. And no inhabitant of this city shall employ any person, (excepting his or her own servant, being in his or her house,) to sweep any of his or her chimneys within the city, other than one of the chimney sweepers appointed and licensed as aforesaid by the board of aldermen; and if any inhabitant of this city shall employ any person other than the chimney sweepers appointed and licensed as aforesaid, in violation of the provisions of this ordinance, he or they shall forfeit and pay a fine not less than one dollar nor more than ten dollars.

Sweepers of chimneys to be licensed.  
Dec. 23, 1825.

Penalty.

SECT. 3. When and so often as complaint is made to the board of aldermen by any chimney sweeper appointed and licensed as aforesaid, or by any inhabitant of the city, against any person or persons that their chimneys are unsafe by reason of foulness, the said board, or any other person by them empowered, are hereby directed to inspect and view, or order to be inspected and viewed, and to them reported, every such chimney complained of as aforesaid; and if upon such view, inspection, and report they shall, either from their own view or the report of the person appointed to view as aforesaid, judge the same to be unsafe and dangerous to make and keep fire therein by reason of foulness, they shall give notice thereof to the person or persons in the possession or occupancy of the house or tenement to which such chimney or chimneys belong; and every occupier

Foul chimneys, how to be examined.  
Ibid

Fires not to be kept in them.

Dec. 28, 1825, or occupiers of such house or tenement shall forfeit and pay a sum not less than one dollar, nor more than twenty dollars, for every day in which fire shall be made and kept in such chimney or chimneys respectively by such occupier or occupiers after notice shall have been given them in manner aforesaid, until the same shall be properly and sufficiently swept.

Penalty for  
burning chim-  
neys, &c.  
June 4, 1850.

Proviso.

SECT. 4. If any chimney, stove-pipe, or flue within the city shall take or be set on fire, the occupant of the house to which such chimney, stove-pipe, or flue appertains, or the person or persons so setting the same on fire, shall forfeit and pay the sum of two dollars; *provided*, that it shall be lawful for any person to set fire to and burn his chimney, stove-pipe, or flue between sunrise and noon, if the buildings contiguous are wet with rain or covered with snow; and it shall be the duty of the chief or other engineers to report to the board of aldermen the name of every person liable to the penalty provided by this section, in their first returns thereafter.

## COMMON AND PUBLIC SQUARES.

### HISTORY.

1. The Common.
2. The Public Garden.
3. Belmont Square.
4. Blackstone Square.
5. Central Square.
6. Chester Square.
7. Franklin Square.
8. Independence Square.
9. Lowell Square.
10. Maverick Square.
11. School Street Squares.
12. Telegraph Hill.
13. Union Park.
14. Washington Square, or Fort Hill.
15. Worcester Square.

### STATUTES.

1. Penalty for injuring trees, statues, fountains, &c., in streets, parks, &c.
2. Owners of beasts damaging same liable, &c.
3. Trees may be set out at public expense, &c.
4. Back Bay Lands to be filled by the commonwealth. Restriction. Proviso.
5. Equivalent in, to be granted for rights relinquished by city of Boston.
6. Act to be accepted by the voters of Boston.

ORDINANCE.	
1. The board of aldermen to have the care of the Common, &c.	9. Wheelbarrows, &c., not allowed on the Common, &c.
2. Police may remove offenders.	10. Playing ball, &c., prohibited on the Public Garden, except, &c.
3. Horses not to be rode on the Common. Proviso.	11. Preaching, speaking, &c., prohibited on the Common, except, &c.
4. Sward, gravel, &c., not to be taken from the Common.	12. Walking on flower-beds in Public Garden, &c., prohibited.
5. Trees on the Common or malls not to be injured, &c.	13. Stones, filth, &c., not to be thrown in any pond, &c.
6. Filth, &c., not to be placed on the Common, &c.	14. Penalties.
7. Carpets not to be shaken on the Common, streets, &c.	15. Board of aldermen may make rules and regulations relating to Common, &c. May be altered or abolished by city council.
8. Cattle, &c., not to go at large on the Common, &c.	

## HISTORY.

1. After the purchase from William Blackstone, in 1634, <sup>The Common.</sup> by the inhabitants of the town of Boston, “of his right and interest in any lands lying within” the neck of land called Boston, the town set apart a portion of their common lands for a “Training Field;” and this portion has always been understood, in a general view, to include the greater part of what is now called, in popular language, the Common. It was extended in length by the town in 1787, by the purchase of two and one eighth acres of William Foster, on its southern and eastern boundary adjoining the burial-ground. In 1737 it appears that a fence had been placed around it; and from that time to the present it has been enclosed. The present iron fence, 5,932 feet in length, was erected in 1836, at a cost of \$ 82,159.85, of which the inhabitants residing on its border subscribed \$ 16,292. The quantity of land within the present enclosure of the Common is forty-eight and three eighths acres.

2. The Public Garden, which is situated west of the Com- <sup>The Public Garden.</sup> mon, and is enclosed, contains twenty-four and one quarter acres. The plan on which it is laid out was adopted by the city government November 5, 1859. It was, with lands adjoining extending to Pleasant Street, until 1794, a part of the ancient possessions of the city, held by title from William Blackstone

Public Garden. and the Indians, and consisted of uplands and flats. In 1794, six lots fronting southerly on Pleasant Street and another street extending from Pleasant Street to the water, were granted to individuals for rope-walks, but no other buildings were to be erected. These lots beginning at the easterly side, by the Common, were each fifty feet in width, and of an average length of more than eleven hundred feet. Only one deed appears to have been given, namely, to William and Archibald McNeil, dated August 31, 1796. The rope-walks were burnt in 1806, rebuilt and again burnt in 1819. A dispute about the title to the land was settled in 1824, by referring the matter to Patrick T. Jackson, Ebenezer Francis, Edward Cruft, and John P. Thorndike, whose award was in substance that the city should pay to the proprietors \$54,000. The lands were conveyed to the city the same year, and the city became again seised of the lands. October 20, 1813, grants were made in the flats and basin, by a vote of the town, to the Boston and Roxbury Mill Corporation, and subsequently to the Boston Water Power Company, with certain restrictions some of which were afterwards modified. By an indenture dated December 11, 1856, the commonwealth transferred to the city a triangular strip on the easterly side of Arlington Street, to be annexed to the Public Garden, and now making its western boundary. The commonwealth, by an act approved April 6, 1859, on condition that no building excepting for a city hall or for horticultural purposes should ever be erected on said garden, contracted to grant the city an equivalent, for relinquishing the right to build between Arlington and Charles Streets (excepting as aforesaid), in the Back Bay Lands owned by the commonwealth, the amount to be fixed by commissioners chosen for that purpose, who were Josiah G. Abbott, George B. Upton, and George S. Boutwell. The commissioners made their award July 1, 1859, which was accepted by the commonwealth July 6, 1859, and by the city July 22, 1859.<sup>1</sup>

See Suffolk  
Deeds, lib. 184,  
fol. 142.

1859, 210, § 4.

Belmont Sq.

3. Belmont Square, in East Boston, containing 30,000 feet,

<sup>1</sup> See City Doc. 1850, No. 18; 1859, No. 42.

enclosed, was laid out by the East Boston Company, and was deeded to the city in 1853. Belmont Square.

4. Blackstone Square, on the west side of Washington Street, having Brookline Street on the north and Newton Street on the south, contains 105,000 feet. It is a part of the ancient public lands, was laid out as a public square about 1800, and the present fence was built in 1849. Blackstone Square.

5. Central Square, in East Boston, containing 49,470 feet, 32,310 of which are enclosed, was laid out by the East Boston Company, and was deeded to the city in 1851. Central Square.

6. Chester Square, between Shawmut Avenue and Tremont Street, containing 57,860 feet, was laid out by the city in 1850, and is enclosed. Chester Square.

7. Franklin Square, on the east side of Washington Street, having Brookline Street on the north and Newton Street on the south, is enclosed, and contains 105,205 feet. It is a part of the ancient public lands, and was laid out as a public square about 1800, and the present fence was built in 1849. Franklin Square.

8. Independence Square is in South Boston, containing about six and one half acres, situate between M and N Streets and Broadway and Second Streets, was laid out as a public square by the land commissioners, in pursuance of a vote of the board of aldermen passed November 30, 1857. Independence Square.

9. Lowell Square, on Cambridge Street, was given to the city by the West Boston (religious) Society, on the condition that the city should fence it and keep it in repair. It is enclosed with an iron fence, and contains 5,772 feet. Lowell Square.

10. Maverick Square, originally called "Hotel Square," in East Boston, containing 22,500 feet, of which 4,398 are enclosed, was laid out by the East Boston Company in 1836, and deeded to the city in 1848. Maverick Square.

11. School Street Squares, in front of the City Hall, contain 4,398 feet, and are enclosed. School Street Squares.

12. Telegraph Hill, in South Boston, was purchased by the city on which to erect a reservoir. Exclusive of the reservoir, there is a lot laid out for a public walk, containing about 190,000 feet, which is enclosed with an iron fence. Telegraph Hill.

Union Park. 13. Union Park, between Shawmut Avenue and Tremont Street, containing 16,000 feet, was laid out by the city in 1851, and is enclosed.

Washington Square, or Fort Hill. 14. Washington Square, commonly known as Fort Hill, but anciently called "Corn Hill," situated on the east side of the city, contains about 38,000 feet, and is enclosed. It is a part of the original possessions of the founders of Boston, and the title has always been held by the inhabitants. May 26, 1632, a fortification was commenced on it which was finished in 1634; it was enlarged in 1644, and much improved at various subsequent periods. Governor Andros was imprisoned in the fort by the citizens April 22, 1689. In 1701, and again in 1740, wind-mills were erected on it by leave of the town. A committee of the town made a report to have the works levelled and ditches filled up April 23, 1796, and June 8, of the same year, a committee was appointed to sell the town land on Fort Hill. In May, 1799, the town granted \$ 200 for levelling the breastwork and completing the street over the hill, and the same year the present enclosure was laid out, fenced, the walks built and trees planted, towards which was a voluntary subscription, amounting to \$ 1,324.25. At or about this time a large quantity of the public land contiguous was laid out into streets and building lots, the latter having been sold from time to time, excepting those on which the school-houses and gunhouse stand.

Worcester Square.

15. Worcester Square, between Washington Street and Harrison Avenue, containing 16,000 feet, was laid out by the city in 1851, and is enclosed.

#### STATUTES.

Penalty for injuring trees, statues, &c., in streets, parks, &c.  
G. S. 46, § 7.  
G. S. 161, §§ 82, 83, 84.

1. Whoever wantonly injures, defaces, tears, or destroys an ornamental or shade tree, or shrub, statue, fountain, vase, or other plant or fixture of ornament or utility, in a street, road, square, court, park, public garden, or other enclosure, shall forfeit not less than five nor more than one hundred dollars, to be recovered by complaint, one half to the complainant and the other half to the use of the person upon whose property, or within whose premises the trespass was committed.

2. Whoever negligently or carelessly suffers any horse or other beast driven by or for him, or any beast belonging to him and lawfully on the highway, to break down, destroy, or injure any tree not his own, standing for use or ornament on said highway, or negligently or wilfully by any other means breaks down, destroys, or injures any such tree, shall be subject to an action for damages at the suit of the owner or tenant of the land in front of which the tree stands.

Owner of beast  
damaging lia-  
ble, &c.  
G. S. 46, § 8.

3. In a city in which the city council, and in a town in which the inhabitants, have accepted this section, the mayor and aldermen or selectmen may set out and maintain shade trees upon the public squares and highways at the expense of such city or town, which may appropriate annually for that purpose a sum not exceeding twenty-five cents for each of its ratable polls in the year next preceding that in which such appropriation is made.

Trees may be  
set out at pub-  
lic expense, &c.  
G. S. 46, § 9.  
See G. S. 46, § 6.  
161, §§ 82, 83, 84

4. The commissioners on the Back Bay are hereby authorized and required to fill up and complete at the expense of the commonwealth, so much of the street next west of the Public Garden, called Arlington Street, as remains to be completed at the time of the passage of this act, so that the said street shall be of the full width of eighty feet; and also the strip of land easterly of said street, which was released by the commonwealth to the city of Boston, by indenture dated December eleventh, eighteen hundred and fifty-six; and no building shall hereafter be erected between Arlington and Charles Streets, except such as are expedient for horticultural purposes; *provided*, that nothing herein contained shall render it unlawful to erect a city hall on the Public Garden.

Back Bay Com-  
missioners to  
fill up lands.  
1859, 210, § 3.

April 6, 1859.

Restriction.

Provisio.

5. By section four, it was provided that the commonwealth was to grant to the city other lands in consideration of the city relinquishing the right it had to erect buildings on the strip of land on the east side of Arlington Street conveyed to the city by the commonwealth, December 11, 1856.

Equivalent to  
be granted for  
rights relin-  
quished by Bos-  
ton.  
1859, 210, § 4.

6. In section six, the legal voters of Boston within thirty days were to meet for the purpose of giving their votes "yes" or "no" on the question of accepting this act, which was approved

Act to be ac-  
cepted by the  
voters of Bos-  
ton.

1859, 210, § 6. April 6, 1859. On April 25, 1859, meetings were held in the several wards, and the act was accepted by a vote of 6,287 yeas to 99 nays.

ORDINANCE.<sup>1</sup>

Board of aldermen shall have the care of the Common, &c.  
Jan. 4, 1862.

SECTION 1. The board of aldermen shall have the care and custody of the Common, Public Garden, public squares, and public fountains of the city, subject to such ordinances, as may from time to time be passed by the city council; but no money shall be expended on the same except for such purposes as shall be ordered by the city council.

Police may remove any person violating any law, &c.  
Ibid.

SECT. 2. It shall be the duty of any police officer to remove from the Common, Public Garden, or any of the public squares or common lands, any person who is violating any law or ordinance, or is committing any nuisance, or is guilty of disorderly conduct.

Horses not to be permitted in, &c.  
Ibid.

SECT. 3. No person shall ride, lead, or drive any horse in or upon the Common, Public Garden, or in or upon any public square, or any open ground belonging to the city, unless by permission of the mayor, or authorized by the board of aldermen; *provided, however*, that on occasion of military exercise, parade, or review, the introduction of any horses on the Common, which may be necessary for the purpose of such exercise, parade, or review, shall not be deemed an infraction of this ordinance.

Proviso.

Sward, gravel, &c., not to be dug or carried away.  
Ibid.

SECT. 4. No person shall dig or carry away any of the sward, gravel, sand, turf, or earth in or upon any part of the Common, Public Garden, public squares, or common lands, except by permission of the mayor and aldermen, for some public use.

Trees not to be climbed, or horses tied to them.  
Ibid.

SECT. 5. No person, except by permission of the mayor and aldermen, shall climb any of the trees growing, or which shall hereafter be planted, on the Common, Public Garden, public squares, or common lands of the city, or in any street or public

<sup>1</sup> An ordinance relating to the Common, Public Garden, public squares, and common lands, passed January 4, 1862.

place of the city, nor tie any horse or other animal to any of said trees, or post any bills thereon. Jan. 4, 1862.

SECT. 6. No person, except by permission of the mayor and aldermen, shall in any manner carry or cause to be carried upon the Common, Public Garden, common lands, or any public square or place of the city, any dead carcass, ordure, filth, dirt, stones, or any offensive matter whatsoever, and no person shall commit any nuisance on the Common, Public Garden, common lands, or any public square or place of the city. Filth, or other substance not to be carried on to, &c. Ibid.

SECT. 7. No person shall shake or otherwise cleanse any carpet on the Common, Public Garden, or on any of the common lands, or in any of the public squares or places, streets, lanes, or alleys of the city. Carpets not to be shaken on. Ibid.

SECT. 8. No owner or keeper of any hog, horse, or grazing animal, shall suffer the same to go at large, or feed upon the Common, Public Garden, common lands, public squares, streets, lanes, or alleys of the city. Horses, &c., not to be at large, &c., on. Ibid.

SECT. 9. No person shall, without permission of the mayor or board of aldermen, carry or cause to be carried upon the Common, Public Garden, or public squares of the city, any wheelbarrow, hand-cart, or other vehicle for the conveyance of burdens. Wheelbarrows, &c., not allowed on. Ibid.

SECT. 10. No person or persons shall, without the consent of the mayor or board of aldermen, engage in games of ball, foot-ball, or other athletic sports, upon the Public Garden. Ball-playing, &c., prohibited. Ibid.

SECT. 11. No person shall deliver any sermon, lecture, address, or discourse on the Common, Public Garden, public squares, or common lands of the city without the permission of the mayor and aldermen. Preaching, &c. prohibited. Ibid.

SECT. 12. No person shall walk or stand upon any of the flower-beds on the Common, Public Garden, or any public square or common lands of the city, or suffer or permit any dog or other animal belonging to him or in his charge to stand or walk upon any of said flower-beds. Walking on flower-beds prohibited. Ibid.

SECT. 13. No person, without the permission of the mayor and aldermen, shall throw or place any stone, sand, gravel, tan, earth, filth, rubbish, or any other substance, in or upon Stones, filth, &c., not to be thrown in any pond, &c.

Jan. 4, 1862. any pond on the Common, Public Garden, or any public square or common lands of said city, or upon the ice on any pond aforesaid, or cut or break, or remove the ice therein or therefrom.

Penalties.  
Ibid. SECT. 14. Any person who shall offend against any of the provisions of this ordinance, shall forfeit and pay for each offence, a sum not less than one nor more than twenty dollars.

Aldermen may  
make rules not  
inconsistent.  
Ibid. SECT. 15. The board of aldermen may from time to time make rules and regulations not inconsistent with the provisions of this ordinance in reference to the use of the Common, Public Garden, public squares, and common lands of the city, but such rules and regulations may be altered or abolished at any time by the city council.

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## CONSTABLES.

### STATUTES.

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| <ol style="list-style-type: none"> <li>1. Mayor and aldermen to appoint constables.</li> <li>2. Persons injured by breach of bond of constables, may maintain actions in name of treasurer. Proviso.</li> </ol> | <ol style="list-style-type: none"> <li>3. Copy of bond to be given to persons applying for the same.</li> <li>4. Special authority of constables in Boston. Bond, &amp;c.</li> <li>5. How removable.</li> </ol> |
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### STATUTES.

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| <p>Mayor and aldermen to appoint constables.<br/>1802, 7, § 1.<br/>1821, 110, § 13.<br/>1854, 448, § 49,<br/>p. 20, <i>ante</i>.<br/>Bond.<br/>See § 4.</p> <p>Powers.</p> | <ol style="list-style-type: none"> <li>1. The mayor, by and with the consent of the aldermen, is empowered to appoint annually, such a number of persons as constables as the public service may require; and the said constables, so appointed, shall give bonds to the city treasurer, in such sums, and on such conditions, as the board of aldermen shall think proper, for the faithful performance of the duties of their office. By the act of 1802, constables in Boston have the same powers as were by law vested in constables chosen by the towns in this commonwealth. Such constables, in addition to</li> </ol> |
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the usual condition of their bonds, shall also be bound to the faithful execution of all warrants committed to them by the treasurer and collector. 1807, 134, § 3.

2. When the condition of any bond, given to the treasurer of the city of Boston by any constable of said city for the faithful performance of the duties of his office, shall be broken to the injury of any person, such person may cause a suit to be instituted upon such bond, at his own costs, but in the name of the treasurer of the city of Boston; and the like indorsements shall be made on the writ, and the like proceedings be had thereon to final judgment and execution, and the like writs of *scire facias* on such judgment as may be made and had by a creditor on administration bonds given to any judge of probate; *provided, however*, that no such suit shall be instituted by any person for his own use, until such person shall have recovered judgment against the constable, his executors or administrators, in an action brought for the malfeasance or misfeasance of the constable, or for non-payment of any moneys collected by the said constable in that capacity, or a decree of a judge of probate allowing a claim for any of the causes aforesaid, and such judgment or decree, or so much thereof as shall be unsatisfied with the interest due thereon, shall be the proportion of the penalty for which execution shall be awarded; *provided, however*, that this act shall not be construed to make any surety in any bond given by the constable as aforesaid, before the passing of this act, liable to any suit, which could not heretofore be legally prosecuted against him. Persons injured by breach of bond of constables, may maintain actions in name of treasurer. 1814, 165, § 1. Proviso.

3. It shall be the duty of the treasurer aforesaid to deliver an attested copy of any constable's bond to any persons applying and paying for the same, and such attested copy shall be received as evidence in any case; *provided, nevertheless*, that if in any suit, the execution of the bond shall be disputed, the court may order the treasurer to bring the original bond into court.<sup>1</sup> Copy of bond to be given to persons applying for the same. Ibid.

<sup>1</sup> For general provisions respecting the authority and duties of constables, see General Statutes, c. 18, §§ 31, 60-70. See, also, *Taxes*, post.

Special author-  
ity in the city  
of Boston.  
Bond, &c.  
1860, 147.

4. Any constable in the city of Boston who shall have given to the treasurer of the city of Boston a bond, with sureties in a sum not less than three thousand dollars, to the satisfaction of the said treasurer, with condition for the faithful performance of his duties in the service of all civil processes which may be committed to him, and shall have caused the same, with the approval of the mayor and aldermen of said city indorsed thereon, to be filed in the office of the city clerk of said city, may, within the said city of Boston, serve any writ or other process in any personal action, and any process in replevin which constables are now by existing provisions of law authorized to serve; and in addition thereto may serve any writ or process in any personal action or process in replevin which may be made returnable to the police court in said city of Boston; and no constable in the city of Boston shall serve any civil process until he shall have given the bond as herein provided.

How remov-  
able.  
G. S. 19, § 3.

5. The mayor of a city may, with consent of the board of aldermen, remove from office a constable for gross misconduct.

## CONTRACTS WITH CITY OFFICERS.

### STATUTE.

1. State, city, town, and other public officers and persons employed by them, &c., not to receive commissions, &c., on purchases and contracts.
2. Penalty on officers, &c., for violations of act, and on persons for offering any bonus, commission, &c.
3. Auditing officers may require claimants to make oath to certain facts.

4. No officer who receives a salary from any county, city, &c., shall receive any fees, &c., but may be paid for expenses.

### ORDINANCE.

1. No member of city council, and no person elected by them, shall be interested in any contract with the city government, unless specially authorized.
2. All contracts made contrary to this ordinance to be void, unless, &c.

### STATUTES.

State, city,  
town, and other  
public officers

1. No officer or agent of the State, or of any city, town, or public institution, nor any person employed by either of them,

authorized to procure materials, supplies, or other articles, either by purchase or contract, or to employ service or labor, shall be allowed either directly or indirectly for himself, or for any other person, to receive any commission, discount, bonus, present, or reward from the person or persons making such contract, furnishing any such materials, supplies, or other articles, or from any person rendering service or labor under such contract.

and persons employed by them, &c., not to receive commissions, &c., on purchases and contracts. 1862, 101, § 1.

2. Any person offending against the provisions of the preceding section, or any person who shall give or offer any such commission, discount, bonus, present, or reward, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than ten dollars, nor more than five hundred dollars, or by fine and imprisonment not exceeding one year, at the discretion of the court.

Penalty on officers, &c., for violating this act, and on persons for offering any bonus or commissions, &c. Ibid. § 2.

3. The state auditor, or the auditor of any city, town, or public institution, or any person authorized to approve demands for the supply of any articles specified in the first section of this act, is hereby authorized, before approving any such demand, to require the claimant to certify under oath, that the whole of the articles for which claim is made has been furnished, or that the whole labor or service has been performed, and that no commission, discount, bonus, reward, or present of any kind has been received, or is promised or expected on account of the same.

Auditing officers may require claimants to make oath to certain facts. Ibid. § 3.

4. No sheriff, deputy-sheriff, jailer, constable, city marshal, or other officer, who receives a salary from any county, city, or town, for his official services, shall be allowed or paid any fees, or extra compensation whatever, for any official services in any criminal case rendered or performed whilst such officer is entitled to a salary as aforesaid; but all fees of such officers, for services in criminal cases, shall be allowed and taxed as in behalf of other officers, and shall be paid to the city, town, or county from which such officer receives his salary. The expenses of such officer, necessarily and reasonably incurred, and actually disbursed, in the service of any precept, shall be allowed and paid to him.

No officer who receives a salary from any county, city, &c., shall receive fees, but only their expenses. 1862, 216, § 15.

Fees to be paid city, &c.

ORDINANCE.<sup>1</sup>

Members of  
city council and  
others not to  
be interested in  
any contract  
with the city.  
Dec. 23, 1850.

SECTION 1. No member of the city council, no member of any board, and no individual chosen by the city council, or by either branch thereof, shall be interested in a private capacity, directly or indirectly, in any contract or agreement for labor, or for any materials, goods, wares, or merchandise furnished to the city, wherein the city is a party interested, unless the same be expressly authorized to be made and entered into with such member, by some ordinance or order of the city council.

All contracts  
made contrary  
to the pro-  
visions of first  
section to be  
void unless,  
&c.  
Ibid.

SECT. 2. All contracts, agreements, purchases, and sales, made contrary to the preceding section, shall be utterly void at the pleasure of the city council; and no bill against the city arising out of or connected with any such contract, agreement, purchase, or sale shall be approved by any committee, passed by the auditor, or paid by the treasurer, unless approved and allowed by express vote of the city council.

## CONTRACTS AND EXPENDITURES.

When appropriations are deficient, committees and boards shall report to city council, &c., the deficiency, and	estimate of amount required. No contract to be made until authorized, &c.
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ORDINANCE.<sup>2</sup>

When appro-  
priation is de-  
ficient, commit-  
tees, &c., to re-  
port, &c.  
March 19, 1859.

Whenever any committee or board is authorized to make any contract, by the city council, or either branch thereof, or to expend any moneys appropriated by the city council, or either branch thereof, for any purpose, and the estimates for such contract shall exceed in amount the appropriation specifically made

<sup>1</sup> An ordinance in relation to contracts with city officers, passed December 23, 1850.

<sup>2</sup> An ordinance in relation to contracts and expenditures, passed March 19, 1859.

for the object thereof; or the sum specifically appropriated for any purpose shall have been expended by them, and for either reason a further appropriation is necessary for the accomplishment of the undertaking, such committee or board shall report to the city council, or the branch thereof from which their authority is derived, the fact of such deficiency of the appropriation, with a detailed statement of the cause or causes thereof, and an estimate of the amount necessary to be added to such appropriation, and the committee or board shall not conclude such contract, or make further expenditure in the premises, until they shall be authorized so to do by the city council, or the branch thereof from which their authority is derived.

Committee, &c.,  
not to make  
any contract  
till authorized.  
Ibid.

## COUNTY AND COUNTY OFFICERS.

## STATUTES.

1. Boundaries, powers, &c., of counties.
2. Former conveyances to counties confirmed.
3. In Suffolk, county property to belong to Boston.
4. How county lands may be sold.
5. County buildings to be provided by Boston.
6. Maps.
7. Same subject.
8. Suffolk and Middlesex counties to have concurrent jurisdiction on Charles River, over crimes, &c.
9. Concurrent jurisdiction with other counties over crimes, &c., in the islands in Boston Harbor.
10. The aldermen of Boston have powers, &c., as county commissioners in the city.

11. In Chelsea, North Chelsea, and Winthrop, commissioners of Middlesex to act.
12. To whom powers and duties of commissioners appertain.

## COUNTY OFFICERS.

1. Judge of probate and insolvency.
2. District attorney.
3. Assistant district attorney.
4. Sheriff.
5. Clerks of courts and assistants.
6. Register of probate and insolvency and assistant register.
7. Commissioners of insolvency.
8. Register of deeds.
9. County treasurer.
10. County commissioners.
11. Master of house of correction.
12. Coroners.
13. Inspectors of prisons.
14. Board of accounts.

## STATUTES.

County of  
Suffolk.

The county of Suffolk now includes within its territorial limits the cities of Boston and Chelsea, and the towns of North Chelsea and Winthrop.

Boundaries,  
powers, &c., of  
counties.  
G. S. 17, § 1.

1. The boundaries, rights, duties, powers, privileges, and immunities, of the several counties shall remain as now established. Each county shall continue a body politic and corporate for the following purposes : to sue and be sued, to purchase and hold for the use of the county personal estate and lands lying within its own limits, and to make necessary contracts and do necessary acts in relation to the property and concerns of the county.<sup>1</sup>

Former convey-  
ances to coun-  
ties confirmed.  
Ibid. § 2.

2. Real and personal estate heretofore conveyed by any form of conveyance to the inhabitants of a county, to the county treasurer, or to a committee, or other persons, for the use and benefit of a county, shall be deemed to be the property of such county ; and such conveyances shall have the same force and effect as if made to such counties by their respective corporate names.

In Suffolk,  
county prop-  
erty belongs  
to Boston.  
Ibid. § 3.

3. In the county of Suffolk, the real and personal estate which on or before the twenty-third day of June in the year one thousand eight hundred and thirty-one belonged, or was deemed and taken to belong, to said county, shall belong to and be vested in the city of Boston ; and the city of Chelsea, and towns of North Chelsea and Winthrop, shall have no right, title, or interest therein.

How county  
lands may be  
sold and con-  
veyed.  
Ibid. § 4.

4. The county commissioners, or other public officers having the charge and management of the county lands, may by their order of record appoint agents to sell any real estate of their county ; and deeds made on behalf of the inhabitants of the county by such agents, under their proper hands and seals, and duly acknowledged by them, shall be sufficient to convey the right, title, interest, and estate which the county then has to the lands so conveyed.

<sup>1</sup> See Mass. Rec. 1643, vol. 2, p. 38 ; 1662, vol. 4, part 2, and p. 52 ; Plymouth Rec. 1685.

5. In the county of Suffolk, the court houses, jails, houses of correction, fire-proof offices, and other necessary public buildings, for the use of the county, shall be provided by the city of Boston, and said city shall pay all county charges.

County buildings to be provided by Boston. G. S. 17, § 6.

6. Changes in the boundaries of cities and towns, the courses of roads, railroads, and canals, and other topographical alterations in each county, shall be correctly and fairly delineated on the county maps in the possession of the county commissioners, who shall retain said maps, and from time to time cause such delineation to be made thereon.

County maps. Ibid. § 7.

7. The secretary of the commonwealth shall, as often as necessary, transmit the manuscript county maps in his office to the respective county commissioners, who shall cause to be transferred thereto, by a competent engineer or surveyor under their direction, all alterations and corrections mentioned in the preceding section, and shall within two months after receiving the same return such maps to the office of the secretary, who shall immediately cause the alterations to be delineated on the plates of the state map.

Same subject. Ibid. § 8.

8. The jurisdiction of the counties of Suffolk and Middlesex shall be in common in and upon the waters of Charles River; that is to say, all that space which lies within the banks of the river so far as the same runs between said counties. All offences committed within the banks of the river, as above described, may be heard, tried, and punished in that county in which legal process against the offender is first issued, in like manner as if such offence had been committed in such county; and civil process from either county may run into and be executed within the common jurisdiction.

Concurrent jurisdiction with Middlesex county on Charles River. Ibid. § 9.

9. The courts in the county of Suffolk, concurrently with the courts of the several other counties in which parts of the territory hereinafter described are situated, shall have jurisdiction of all crimes, offences, and misdemeanors committed on the islands or waters in Boston Harbor which lie westerly of a line drawn from Point Alderton to the easternmost point of the Outer Brewster Island, and from thence to Short Beach, at the line dividing the towns of North Chelsea and Winthrop, as if said islands and

Jurisdiction with other counties over islands in Boston Harbor. Ibid. § 10.

1863, c. 177.

waters were within the limits of the county of Suffolk; and also of all crimes, offences, and misdemeanors committed in those portions of the town of Hull not embraced within the previous provisions of this section.

In Suffolk, aldermen have powers of county commissioners.  
G. S. 17, § 33.

✓ 10. In the county of Suffolk, the aldermen of the city of Boston shall have like powers and perform like duties within said city as are exercised and performed by the county commissioners of other counties, except such as relate to trials by jury, and the recovery of damages on such trials, in laying out, altering, or discontinuing, highways or townways.

In Chelsea, North Chelsea, and Winthrop, commissioners of Middlesex to act.  
Ibid. § 34.

11. In the county of Suffolk, the county commissioners for the county of Middlesex shall have jurisdiction within the city of Chelsea and the towns of North Chelsea and Winthrop, and shall exercise and perform therein all the powers and duties relating to highways and to all other matters which in their own county are committed to their control and direction, except as is otherwise provided by law; and when performing duties which relate to said places, they shall be paid therefor by said places, or either of them, in such proportions as the commissioners may direct, at the rate of three dollars a day, and five cents a mile, travel, for each commissioner attending in the case.

To whom powers and duties of commissioners, &c., appertain.  
Ibid. § 35.

12. All the provisions of law concerning the powers, duties, and liabilities of county commissioners and their clerks shall, except where otherwise specially provided, be construed to include and apply to all other public officers who by law exercise the powers of such commissioners or clerks in the respective counties.

#### COUNTY OFFICERS.

Constitution, c. 1, § 2, art. 9;  
c. 3, § 1.  
G. S. 119, §§ 1, 16.

1. The judge of probate and insolvency is appointed by the governor with the advice and consent of the council, and holds office during good behavior. Salary, \$ 3,000; paid by the State.

Ibid 10, §§ 1, 2.

2. The district attorney elected in November, 1862, and every third year thereafter by the voters of Suffolk district (which is the same as Suffolk county), holds office for three years from the first Wednesday in January following said elec-

tion. For sufficient cause he may be removed by the supreme G. S. 112, § 4. judicial court. In case of a vacancy, the governor may appoint Ibid. 14, § 30. a person to fill such vacancy, who shall hold the office until the next annual election, or until another is chosen in his stead. In case of no election or a vacancy, the governor shall order a new Ibid. 10, §§ 10, 13. election. Salary, \$ 3,000 ; paid by the State. Ibid. 14, § 29.

3. The assistant district attorney for Suffolk district is ap- Ibid. 14, § 32. pointed by the governor, and holds his office at the pleasure of the executive. Salary, \$ 1,800 ; paid by the State.

4. The sheriff, elected in November, 1862, and every third Ibid. 10, §§ 1, 5. year thereafter, holds office for three years from the first Wednesday in January following his election. He may be removed by Ibid. 17, §§ 51- the governor for cause, and the vacancy for this or any other 64. cause may be filled by appointment by the governor ; the person so appointed to hold office until a successor is elected and qualified. In case of a failure to elect, or other vacancy, the gov- Ibid. 10, §§ 10, ernor shall order a new election to fill such vacancy. Salary, 13. \$ 2,500 ; paid by the county.

5. The clerks of the courts, to wit : one clerk of the su- Ibid. 10, §§ 1, 3. preme judicial court, and two clerks of the superior court (one for the civil and one for the criminal business), elected November, 1861, and every fifth year thereafter, by the voters of Suffolk county, hold their office for five years from the first Wednesday in January following their election. They may for cause be re- Ibid. 112, § 4. moved from office by the supreme judicial court. If a vacancy Ibid. 121, § 7. in the office of clerk of the supreme judicial court in Suffolk occurs the justices of that court may appoint a clerk to hold office until the next annual election, or until another is elected or appointed ; and if there is a vacancy in the superior court, the justices of that court may in like manner appoint a clerk for a similar term. In case of a failure to elect, or a vacancy, the gov- Ibid. 10, §§ 10, ernor shall order an election to fill such vacancy. For salaries 13. Ibid. 23, they shall receive the following sums out of the fees received by 24. them respectively, to wit : the clerks of the supreme judicial court and of the superior court for civil business, \$ 3,000 each, and the clerk of the superior court for criminal business, \$ 2,000 ; and each clerk shall in addition retain one half of the excess of

- G. S. 121, §§ 23, 24. the fees received by him over such salary, and the other half of such excess he shall pay to the county. The justices of the supreme judicial court for the county of Suffolk, and the justices of the superior court in the same county, may appoint assistant clerks for their several courts, to hold office for three years, subject to removal by the courts. The salary of the assistant clerk of the supreme judicial court is \$ 1,500, and that of the superior court for civil business, \$ 1,800 ; paid by the county.
- Ibid. § 8. Ibid. § 26. When assistant clerks are unable to perform their duties the court may appoint assistant clerks *pro tem.*, who shall be sworn and give bonds, and be paid by the county ; the amount so paid to be deducted from the salary of the assistant clerk.<sup>1</sup>
- 1863, 64, §§ 1, 2. 6. The register of probate and insolvency, to be elected in November, 1863, by the voters in Suffolk county, and every fifth year thereafter, holds his office for five years from the first Wednesday of January following his election. He may be removed for sufficient cause by the supreme judicial court. If a vacancy occurs the governor may appoint some person to fill the office until another is elected. Salary, \$ 3,000 ; paid by the State. The judge of probate, &c., may appoint an assistant register to hold office for three years, unless sooner removed by the judge. Salary, \$ 1,500 ; paid by the State.
- Ibid. 10, §§ 1, 4. Ibid. 112, § 4. Ibid. 119, § 13. Ibid. § 10. Ibid. 10, § 10. Ibid. 119, §§ 11, 16. 7. The commissioners of insolvency, three in number, elected in November, 1862, by the voters of Suffolk county, and every third year thereafter, hold office for three years from the first Wednesday in January following their election. For good cause they may be removed by the supreme judicial court. In case of a failure to elect, or if a vacancy occurs, the governor may fill the vacancy, by the appointment of a person to hold office until a new election. They are paid by fees.
- Ibid. 10, § 10. Ibid. 112, § 4. Ibid. 17, § 81. 8. The register of deeds for Suffolk county elected in November, 1861, and to be elected every third year thereafter, holds office for three years. He is to be sworn before one or more of the aldermen of Boston, and under their direction shall give bond for the faithful discharge of his duties. When found

<sup>1</sup> For the election of clerk of police court, see *Courts*, § 3.

guilty by the grand jury of misconduct in his official duties or when, by infirmity he is incapable of discharging them he shall be removed by the superior court. In case of removal, resignation, or death, the superior court shall appoint some person to fill the vacancy until a new election. He is paid by fees.

G. S. 17, § 88.  
Ibid. 17, § 87.  
Ibid. 10, §§ 10, 15.

9. The treasurer of the city of Boston is, *ex officio*, treasurer of the county of Suffolk. He shall be sworn by one or more of the aldermen of Boston, and shall give bond in such sum as the aldermen shall direct.

Ibid. 17, §§ 44, 36.

10. The aldermen of the city of Boston have the powers and duties of county commissioners, with certain exceptions.

Ibid. 17, § 33;  
43, § 77.

11. The master of the house of correction in Suffolk is appointed by the city council of Boston, to hold his office during its pleasure. His compensation is established by the city council and board of directors, and is paid by the city.

Ibid. 178, § 19.

12. Coroners and special coroners are appointed by the governor for seven years. If a coroner neglects or refuses to give bond, or the condition of his bond is broken, he is liable to be removed, and is subject to like penalties as are sheriffs. In Boston, the city auditor shall audit coroners' accounts.

Constitution,  
c. 2, § 1, art. 9.  
1861, 113, § 1.  
G. S. 17, § 77;  
175, § 15.

13. The inspectors of prisons, in Suffolk, are the judges of the courts of probate and insolvency and the justices of the police court.

Ibid. 178, §§ 62, 65.

14. The board of accounts is composed of the same persons as the inspectors of prisons. See BOARD OF ACCOUNTS, p. 37.

Ibid. 17, § 50;  
178, § 51.

## COUNTY RECEIPTS AND EXPENDITURES.

### RECEIPTS.

Fines, fees, forfeitures, penalties, forfeited recognizances, and costs recovered in prosecutions, in which any part of the costs are paid by the county, are to be paid to the county treasurer, where no other provision is especially made by law, whether

G. S. 116, §§ 29, 30, 43; 121, §§ 21, 23; 176, §§ 1, 9-13, 1860, 191, § 10.  
G. S. 17, § 71.

G. S. 170, § 47. received by the justices or clerks of the courts, or the sheriff, jailer, master of the house of correction, or master of the house of industry, or any other person lawfully entitled to collect and receive the same ; excepting that the clerks of the supreme judicial and superior courts may retain out of the fees received by them the amount of their several salaries, and one half of the excess of said fees, not including fees for copies of papers which they are not required by law to furnish.

Rent of jail for confinement of prisoners committed by United States courts.

Ibid. 50, § 22. Fees paid by hawkers and peddlers for county licenses.

#### EXPENDITURES.

Ibid. 17, § 6. The expenditures, enumerated below, strictly belong to the county and are treated here as such, although by special provisions of law in Suffolk the city of Boston pays all county charges.

Ibid. 121, § 26. The salaries of the assistant clerks of the supreme judicial court and of the superior court.

Ibid. 17, § 70;  
178, § 21. The salary of the sheriff, and such compensation in addition as the mayor and aldermen may order for the keeping of prisoners.

Ibid. 17, § 6. The salaries of the keepers of the court house, police court rooms, probate office, and of the office of the register of deeds.

Ibid. 178, § 40. The salary of the chaplain at the jail.

Ibid. 176, §§ 4,  
14, 17.  
1800, 191, § 10.  
G. S. 116, §§ 21,  
43; 115, § 17. The pay of jurors and witnesses ; deputy sheriffs, constables, and messengers, when on duty in the supreme judicial, superior, and police courts in Suffolk county, including the police court in Chelsea ; and all incidental expenses in said courts.

Ibid. 175, §§ 12-  
15; 157, § 6. The expenses of holding coroners' inquests on dead bodies, including the fees of coroner, when the person found dead is not a stranger.

Ibid. 17, § 50. The pay of the board of accounts and inspectors of prisons, their clerks, and incidental expenses.

Ibid. 75, § 11;  
76, § 25. The fees of commissioners and judges, and officers for commitment of girls to State Industrial School at Lancaster, and of

boys to the Reform School at Westborough, or the nautical branch of said school. G. S. 76, § 25.

The payment of fines, forfeitures, penalties, and rewards for the breach of any law of the commonwealth received by the county, which by law enure to complainants or other parties. Ibid. 173, § 6; 176, § 17. 1860, 101, §§ 7, 8.

The expense of building, repairing, and furnishing court houses, jails, houses of correction, fire-proof offices, and other necessary public buildings for the use of the county. G. S. 17, §§ 5, 6; 29, §§ 3, 13; 178, § 6; 118, § 13.

Fuel, lights, blanks, blank books, printing, stationery, and incidental expenses for all the courts, (excepting courts of insolvency,) register of deeds, register of probate, and including the police court in Chelsea. Ibid. 116, § 21; 116, § 17; 117, § 31; 17, § 28; 29, §§ 1, 2.

Making indexes of deeds and plans, and copying old ones in the office of register of deeds, binding and filing papers and documents, and arranging the same, copying old records in any of the county offices, completing the recording of deeds, &c., that may have been left unfinished; and procuring copies of records or papers in the possession of any other county, city, or town, in which the county of Suffolk is interested; also, the preparing county maps. Ibid. 17, §§ 103, 104; 29, §§ 1, 2, 7, 13.

Repairing and replacing the weights, measures, and balances, which are furnished by the State, and the safe-keeping of the same. Ibid. 51, §§ 5, 6, 7.

The expenses of supporting all persons committed to the jails or houses of correction, including pay of officers, instruction in reading and writing, books, pay of chaplain and physician, the conveyance of prisoners to and from the station houses, lock-ups, jails, houses of correction, and court houses, the burial of prisoners who have no settlement in the State, and all incidentals; excepting for persons committed to jail on mesne process or execution, so long as the fees for their board are paid by the defendant or debtor, plaintiff or creditor. Ibid. 178, §§ 50-61; 17, § 50; 178, §§ 26, 41.

The expenses of building, or of special repairs upon, and of discontinuing, in the city of Chelsea and the towns of North Chelsea and Winthrop, all highways, county roads and bridges, including land damages, that may be assessed or awarded by the county commissioners of the county of Middlesex as justly chargeable to the county of Suffolk. Ibid. 17, § 34; 43, §§ 8, 9, 12, 44, 47, 48, 49, 51, 52, 80; 62, §§ 14, 15; 11, § 30; 17, § 6.

## COURTS.

## STATUTES.

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| <ol style="list-style-type: none"> <li>1. Superior court.</li> <li>2. Police court.</li> <li>3. Clerks, election, removal.</li> <li>4. Clerk may appoint assistants.</li> <li>5. Clerk, <i>pro tempore</i>.</li> <li>6. Clerks to be sworn, and give bonds; duties, records.</li> <li>7. Justices and clerks not to be employed as counsel.</li> <li>8. Terms and places of holding courts.</li> <li>9. Certain expenses of courts.</li> <li>10. Complaints.</li> <li>11. Process.</li> <li>12. Adjournments, parties, witnesses.</li> <li>13. Clerks' duties.</li> <li>14. Fees, fines, &amp;c., to be paid over.</li> <li>15. Same subject.</li> <li>16. Same subject.</li> <li>17. Costs to be entered in record book.</li> </ol> | <ol style="list-style-type: none"> <li>18. Costs not to be paid clerk, until accounts are rendered.</li> <li>19. Judge and clerk to have no pay but regular salary.</li> <li>20. Police court of city of Boston; justices' salaries.</li> <li>21. Senior justice; warrants and complaints.</li> <li>22. Clerks and assistant clerks; salaries.</li> <li>23. Terms of court for criminal business.</li> <li>24. Terms for civil business.</li> <li>25. Different sessions may be held at same time.</li> <li>26. Jurisdiction.</li> <li>27. Justices may make rules.</li> <li>28. Clerk to render quarterly accounts of costs, &amp;c., to board of accounts.</li> <li>29. Special justices; duty; pay.</li> <li>30. Same subject.</li> </ol> |
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## STATUTES.

Superior court.  
1859, 196.

1. By the act of April 5, 1859, the superior court of the county of Suffolk, and the municipal court were abolished, and in their place was substituted the superior court. The former were county courts, with judges and clerks paid by the county of Suffolk; the latter is a court with jurisdiction throughout the commonwealth, holding in the county of Suffolk four terms a year for civil business, on the first Tuesdays of January, April, July, and October, and twelve terms each year for the transactions of criminal business, a term commencing on the first Monday of each month. The judges, clerks, and all the salaried officers of the court are paid by the commonwealth. The general provisions of law, applicable to the superior court, can be found in the General Statutes, chapters 114, 115. They are not given here, as they contain nothing peculiar to the county of Suffolk.

## POLICE COURT.

2. Since the passage of the General Statutes, the courts Police court. formerly known as the police court and the justices' court, in Boston, are now the police court. Some of the general provisions of law applicable to the police court of the city of Boston are as follows :—

3. The clerks in office at the time the General Statutes took effect were continued in office until their successors should be chosen and qualified, at the annual municipal election in the year eighteen hundred and sixty-one, and every fifth year thereafter, clerks of the several police courts, where the office of clerk shall then exist by law, shall be chosen by the districts, and shall hold office until their successors are chosen and qualified. If a clerk is removed, or otherwise vacates his office, another shall be chosen at the annual municipal election, for the remainder of the term. A clerk may be removed for cause, Clerks. Election, removal. G. S. 116, § 4. Ibid. 112, § 4. by a majority of the justices of the supreme judicial court.

4. The clerk may, subject to the approval of the justice or court, from time to time appoint, to aid him in the discharge of his duties, one or more assistant-clerks, who shall be removable at his pleasure, and for whose doings he shall be responsible. Clerks may appoint assistants. Ibid. 116, § 6.

5. In case of the absence, death, or removal of a clerk, the court shall appoint a clerk *pro tempore*, who shall receive the compensation of the clerk and act until he resumes his duties, or the vacancy is filled by election. Clerk pro tempore. Ibid. § 7.

6. The clerk, assistant-clerks, and clerk *pro tempore*, of each court shall be sworn; and the clerk shall give bonds in a sum not less than three times the amount of his annual salary, with sureties to the acceptance of the treasurer of the city, town, or county, with a condition for the faithful performance of the duties of his office. He or his assistants shall attend all sessions of the court, and keep a record of all the proceedings.<sup>1</sup> The records in civil and criminal cases shall be kept separately in different books. Clerks to be sworn and give bonds; duties, records. Ibid. § 8.

<sup>1</sup> For the clerk's duty in cases of appeal, see Act of 1862, c. 217.

Justice and  
clerks not to be  
employed in  
certain suits.  
G. S. 116, § 9.

7. No justice, clerk, or assistant clerk, shall be retained or employed as counsel or attorney in any suit, complaint, or proceeding pending in his court, nor in any which has been examined or tried therein; and no special justice shall be so retained or employed in any case in which he shall officiate as justice.

Terms and  
places of hold-  
ing courts.  
Ibid. § 20.

8. Each court shall be held as often as necessary for civil and criminal business within the district for which it is established, in the court house, or in any other suitable place to be provided by the district, and may be adjourned from time to time to the same or any other place in the same district, as occasion requires. Separate terms of the court for civil and criminal business, and the times of holding the same, shall be fixed by the justice or justices by general rule.

Certain ex-  
penses of  
courts.  
Ibid. § 21.  
1861, 172.

9. The reasonable expenses of such courts for rent and care of court rooms, fuel, record books, blanks, and stationery, and otherwise incidental to maintaining such courts, shall be certified by the justices thereof, and audited, allowed, and paid out of the county treasury to the parties entitled thereto, like costs in criminal cases.

Complaints.  
G. S. 116, § 25.

10. Complaints made to a police court shall be entered on a docket to be kept for the purpose, and all warrants issued upon any complaint shall be returned to the court specified in the warrant, with the return of the officer who had the same for service indorsed thereon.

Process.  
Ibid. § 26.

11. Processes issuing from a police court having a clerk, shall be under the seal of the court, signed by the clerk or an assistant clerk, and shall bear test of the justice or first justice who is not a party thereto; and in case of the death, absence, or disability of the justice, then of one of the special justices. In other respects the processes of said courts shall be substantially like the processes issued by justices of the peace.

Adjournments,  
witnesses, &c.,  
Ibid. 116, § 27.

12. When a trial or examination pending before a police court is adjourned to a future day, as provided in chapter one hundred and seventy, the parties and witnesses shall not be required to attend from day to day, but they shall attend at the time to which the cause is adjourned, and the recognizances, if any, shall be taken accordingly.

Ibid. 170.

13. The clerk of each court where the office of clerk is established by law, and the justice of every other court, shall make all warrants, writs, processes, and returns of the court, tax bills of cost, and receive all fees, fines, forfeitures, and costs accruing from the business of the court in civil and criminal cases, including fees for blanks and copies. All fees for copies shall be indorsed thereon.

Clerk's duty,  
&c.  
G. S. 116, § 28.  
1860, 191, § 1.

14. The clerk or justice receiving such fees, fines, forfeitures, and costs, shall account for and pay over the full amount thereof quarterly, in the months of January, April, July, and October, in each year, to the treasurer of the county, except as is provided in the following section.

Fees, fines, &c.,  
to be paid over.  
G. S. 116, § 29.  
1860, 191, § 1.

15. All fines and forfeitures so received by the clerk or justice, which accrue to any city or town, shall be paid to such city or town as often as twice in each year; and all fees of officers and witnesses, whether received directly from the persons convicted or through the county treasurer, shall be paid the persons entitled thereto, and if not so paid shall be accounted for and paid over to the county treasurer, in like manner as is required of justices of the peace.

Same subject.  
G. S. 116, § 30.

16. Fees and costs in criminal cases, not received by the justice or clerk, shall be made up, taxed, certified, allowed, and paid, as is provided in prosecutions before justices of the peace.

Same subject.  
Ibid. § 31.

17. The clerks of police courts, the standing justices of police courts of which there are no clerks, and trial justices, shall enter all costs taxed and allowed by them in a record book to be kept by them for that purpose, specifying the case in which the same were allowed, to whom allowed, and the several items of charge specifically; and the receipt of the person entitled thereto shall be entered upon the book when the amount thus allowed is paid.

Costs to be entered in a record book.  
Receipt.  
1860, 191, § 7.

18. The county treasurers of the several counties shall not pay over to any justice or clerk of any police court, or to any trial justice, any costs taxed by them and allowed in cases heard before said courts or justices, until the justice or clerk of a police court, or the trial justice, shall have rendered an account in writing of all fines and costs received by him since his last

Costs not to be paid clerk, court, or justice until accounts are rendered.  
1860, 191, § 8.

1860, 191, § 8. return, and of all fees which have remained in his hands unclaimed, for the space of three years after the allowance of the same.

Judge and clerk to have no pay but regular salary, &c. 19. No justice or clerk shall receive any compensation, besides his regular salary or allowance, for making or issuing, in any capacity, complaints, warrants, subpoenas, or other criminal process, which he is by law authorized to issue; or for any service performed by him in the discharge of his official duties in said court.  
G. S. 116, § 34.  
1860, 191, § 9.

## POLICE COURT OF BOSTON.

Police court of Boston. Justices' salary. 20. The justices of the police court of the city of Boston shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur others shall be appointed in the manner provided by the constitution, so that there shall be three justices. The salaries of the justices shall be twenty-five hundred dollars each, payable from the treasury of the commonwealth.  
G. S. 116, §§ 35, 33.

Warrants and complaints. 21. The senior justice shall be the first justice of the court; and when the court is not in session any justice thereof may issue warrants and receive complaints.  
Ibid. § 36.

Clerks and assistants. 22. The clerk and the assistant clerks shall receive annual salaries from the treasury of the commonwealth, as follows: the clerk, two thousand dollars; the first assistant clerk, eighteen hundred dollars; the second, fifteen hundred dollars; the third one thousand dollars; and the fourth, nine hundred dollars.  
Ibid. §§ 33, 37.  
1860, 100.

Terms of court. Criminal business. 23. The court shall be held for criminal business by one or more of the justices daily in the forenoon at nine o'clock, and in the afternoon, except on Saturday, at three o'clock or some hour thereafter. It may be held on Saturday afternoons if it appears expedient to any of the justices.<sup>1</sup>  
G. S. 116, § 38.

Civil business. 24. The court shall be held for civil business by one or more of the justices, weekly. Each term shall commence on Saturday, and actions therein may be continued to any future day fixed for the sitting of the court.<sup>1</sup>  
Ibid. § 39.

<sup>1</sup> See Act of 1862, c. 217, relating to cases appealed or removed from the police to the superior court.

25. Different justices may hold different sessions at the same time for the trial of civil or criminal cases, in any rooms in the court-house or in other places assigned by the aldermen of the city of Boston.

Different sessions may be held at same time.  
G. S. 116, § 40.

26. The court shall have the same jurisdiction as justices of the peace in all civil actions and proceedings; which shall, when all the plaintiffs and defendants reside within the district, exclude the jurisdiction of other police courts and justices of the peace. The court shall also have jurisdiction concurrently with the superior court in the county of Suffolk of all personal actions and proceedings in civil cases in which the amount demanded or the value of the property claimed exceeds one hundred dollars and does not exceed three hundred dollars; *provided*, the defendants reside or have their usual place of business in the county of Suffolk. All cases and proceedings pending in or returnable to the justices' court for the county of Suffolk, and the records and jurisdiction of said court are transferred to said police court.

Jurisdiction.  
Ibid. § 41.  
1863, 197, § 2.  
See G. S. 116,  
§§ 18, 19.

27. The justices shall meet from time to time to establish necessary rules for the orderly and uniform conducting of the business of the court, and also to arrange, distribute, equalize, and insure a prompt and punctual discharge of their duties.

Justices may make rules.  
G. S. 116, § 42.

28. The clerk of the court shall render to the board of accounts of the county of Suffolk a quarterly account of all criminal costs and fees taxed by him, and the board upon approval thereof shall certify the same to the treasurer of the county of Suffolk, who shall pay the same to the persons entitled thereto.

Clerk to render quarterly account.  
Ibid. § 43.  
See pp. 37, 127, 128.

29. The act of May 21, 1861, provides: That the governor may, with the advice and consent of the council, appoint, and commission two special justices of the police court of the city of Boston. Either of said special justices may, upon the request of the justice of the police court whose duty it may be in rotation to hold any term of said court, or in case of the sickness or absence of such justice, or a vacancy, then upon the request of the other justices of such court, hold any term thereof. Such special justices shall receive no compensation from the commonwealth, but shall receive from the justice whose duty they

Special justices.  
Duty, pay.  
1861, 210.

1861, 210. perform, a proportionate part of his salary for each day's service.

Special justice's  
tenure of office,  
duties.  
1862, 209.

30. The provisions of the act in the preceding section were modified by the act of April 30, 1862, as follows: The special justice of the police court of the city of Boston shall continue to hold his office according to the term of his commission, and at the request of the justice of said court whose duty it may be in rotation to hold any term of said court, or in case of the sickness or absence of any justice, or a vacancy, then upon the request of the other justices of said court, or either of them, shall hold any term or terms thereof, and during the time of such sickness, absence, or vacancy, shall have and exercise all the powers and duties which, by the statutes of this commonwealth, are to be exercised by the justices of said court, and shall receive for such services all the compensation which the justice, whose place he so supplies, would be entitled to receive for the same services during the same time; to be paid out of the salary and fees to which such justice would have been entitled for the like services.

Compensation.  
Ibid.

## CRIERS.

### ORDINANCE.

1. Licenses to be granted to common criers. Term of license.
2. Crying without license.

3. Criers to keep a list of matters cried, &c. Shall not cry libellous matter, &c.
4. Penalty for violation.

### ORDINANCE.<sup>1</sup>

Licenses to be  
granted to com-  
mon criers.  
June 10, 1850.  
1864, 448, § 49.  
See *ante*, p. 20,  
§ 49.

SECTION 1. The mayor, by and with the advice and consent of the aldermen, may from time to time grant licenses to such and so many persons as he may deem expedient, to be common criers in this city; and such licenses shall continue in force until

<sup>1</sup> An ordinance to regulate common criers, passed June 10, 1850.

the first day of May next after the date thereof, unless sooner revoked by the board of aldermen, and no longer.

Term of license.  
June 10, 1850.

SECT. 2. No person shall be a common crier within the city of Boston, or cry any goods, wares, or merchandise, lost or found, stolen goods, strays, or public sales, in any of the streets, squares, lanes, or public places within the city, unless he shall be licensed as aforesaid.

Crying without  
license.  
Ibid.

SECT. 3. Every person so licensed shall keep a true and perfect list of all the matters and things by him cried, and the names of the persons by whom he was employed to cry the same ; which list shall be open, and subject to the inspection of the board of aldermen, whenever they shall demand the same ; and no common crier shall publish or cry any abusive, libellous, profane, or obscene matter or thing whatsoever.

Criers to keep  
a list of mat-  
ters cried, &c.  
Ibid.

Shall not cry  
libellous mat-  
ter, &c.  
Ibid.

SECT. 4. Any person who shall be guilty of a violation of this ordinance, or any part thereof, shall forfeit and pay, for each offence, a sum not less than one dollar nor more than fifty dollars.

Penalty for  
violation.  
Ibid.

## DEEDS.

ORDINANCE.  
1. Mayor authorized to execute  
deeds, &c.

2. Mayor authorized to discharge  
and assign mortgages.

### ORDINANCE.<sup>1</sup>

SECTION 1. The mayor of the city is authorized and empowered to affix the common seal of the city unto, and to sign, seal, execute, and deliver in behalf of the city, all deeds and leases of lands sold or leased by the city, and all deeds, agreements, indentures, or assurances, made and entered into by order of the city council.

Mayor author-  
ized to execute  
deeds, &c.  
Nov. 18, 1833.

<sup>1</sup> An ordinance providing for the execution of deeds and leases and discharge of mortgages on behalf of the city, passed November 18, 1833.

Mayor author-  
ized to dis-  
charge and  
assign mort-  
gages.  
Nov. 18, 1833.

SECT. 2. Whenever any person having lawful authority to redeem any estate mortgaged to the city, shall make application to the mayor for such purpose, the mayor shall have power, on the payment of the sum of money due on said mortgage made to the treasurer of the city, to discharge, release, or assign the same without liability or recourse to the city, the assent of the board of aldermen thereto being first had and obtained, and to execute, in behalf of the city, any and all legal instruments that may be necessary for this purpose.

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## DOGS.

### STATUTES.

- |   |  |
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| <ol style="list-style-type: none"> <li>1. Dogs to be registered and licensed.</li> <li>2. Clerk to issue license. Treasurer to keep account, &amp;c.</li> <li>3. To post list, &amp;c.</li> <li>4. Dog may be licensed at any time, &amp;c. Removal.</li> <li>5. Penalty for neglect.</li> <li>6. For removing collar, &amp;c.; for exposing poisons, &amp;c.</li> <li>7. Dogs unlicensed may be killed, &amp;c. Bounty.</li> <li>8. Damages by.</li> <li>9. When any person may kill, &amp;c.</li> <li>10. Dangerous, to be confined by owner, or killed.</li> <li>11. After notice, any person may kill.</li> </ol> | <ol style="list-style-type: none"> <li>12. Liability of owner, in case, &amp;c.</li> <li>13. Towns liable for loss in certain cases; may recover of owner.</li> <li>14. Persons damaged to have choice of remedy.</li> <li>15. Officers to kill unlicensed dogs. Penalty for neglect.</li> <li>16. Towns may make by-laws, &amp;c. Fees for license.</li> <li>17. How dogs may be licensed after May 1.</li> <li>18. Fines, &amp;c.; how recovered.</li> </ol> |
|---|--|

### ORDINANCE.

Proceedings in case any dog shall disturb the quiet of any person, by barking, &c.

### STATUTES.

Dogs to be reg-  
istered and  
licensed.  
G. S. 88, § 52.

1. Every owner or keeper of a dog shall annually on or before the thirtieth day of April, cause it to be registered, numbered, described, and licensed for one year from the first day of the ensuing May, in the office of the clerk of the city or town

wherein he resides ; and shall cause it to wear around its neck a collar distinctly marked with its owner's name and registered number, and shall pay for such license one dollar for a male dog and five dollars for a female dog. G. S. 88, § 52.

2. The clerk shall issue the license, and receive and pay the money therefor into the city or town treasury, retaining to his own use ten cents for each license. The treasurer shall keep an accurate and separate account of all sums received and paid out under the provisions of this chapter, relating to dogs, which account shall at all times be open to the inspection of any voter of the place. Clerk to issue license. Treasurer to keep account, &c. Ibid. § 53.

3. The clerk shall annually, within one week after the first day of May, post in some conspicuous public place a list of all dogs licensed for the current year ; and shall furnish a copy thereof to the chief of police of the city, or one of the constables of the town ; and shall also, from time to time, furnish said officers with a list of such dogs as are subsequently licensed during the year. To post list, &c. Ibid. § 54.

4. Any owner of a dog may, at any time, have it licensed until the first day of the ensuing May, upon paying the sum as provided in section one ; but such license shall not exempt him from the penalty of the following section, on complaint made prior to issuing the license. No new license for the current year shall be necessary upon the removal of a licensed dog into another city or town, unless required by some by-law passed under section seventeen. Dog may be licensed at any time, &c. Ibid. § 55. Removal.

5. Whoever keeps a dog contrary to the provisions of this chapter, shall forfeit ten dollars, to be recovered by complaint to the use of the place wherein the dog is kept. Penalty for neglect. Ibid. § 56.

6. Whoever wrongfully removes the collar from or steals a dog, licensed and collared as aforesaid, shall be punished by fine not exceeding fifty dollars ; and whoever wrongfully kills, maims, entices, or carries away such a dog, shall be liable to its owner for its value in an action of tort. Whoever distributes or exposes any poisonous substance, with intent that the same shall be eaten by any dog, shall be punished by fine not exceeding fifty nor less than ten dollars. For removing collar, stealing dog, &c. Ibid. § 57. For exposing poisons, &c. Ibid.

Dog may be  
killed when not  
licensed, &c.  
Bounty.  
G. S. 88, § 58.

7. Any person may, and every police officer and constable shall, kill or cause to be destroyed all dogs going at large and not licensed and collared according to the provisions of this chapter; and such officers, when not otherwise paid for their services, shall receive from the city or town treasury fifty cents for each dog so destroyed by them.

Damages by  
dog.  
Ibid. § 59.  
20 Pick. 477.  
12 Met. 291.  
12 Cush. 278.  
When any per-  
son may kill,  
&c.  
G. S. 88, § 60.  
13 Johns. 312.  
4 Cowen, 351.

8. Every owner or keeper of a dog shall forfeit to any person injured by it double the amount of the damage sustained by him, to be recovered in an action of tort.

9. Any person may kill a dog that shall suddenly assault him while he is peaceably walking or riding without the enclosure of its owner or keeper; and any person may kill a dog that is found out of the enclosure or immediate care of its owner or keeper, worrying, wounding, or killing any neat cattle, sheep, or lambs.

Dangerous, to  
be confined by  
owner or killed.  
G. S. 88, § 61.

10. If any person so assaulted, or finding a dog strolling out of the enclosure or immediate care of its owner or keeper, shall, within forty-eight hours after such assault or finding, make oath thereof before a justice of the peace or police court for the county or before the clerk of the city or town where the owner of the dog dwells, and shall further swear that he suspects the dog to be dangerous or mischievous, and shall give notice thereof to its owner or keeper by delivering him a certificate of such oath signed by such justice or clerk, the owner or keeper shall forthwith kill or confine it; and if he neglects so to do for twenty-four hours after such notice, he shall forfeit ten dollars.

After notice,  
any person may  
kill.  
Ibid. § 62.

11. If, after such notice, the dog is not killed or confined, but is again found strolling out of the enclosure or immediate care of its owner or keeper, any person may kill it.

Liability of  
owner in case,  
&c.  
Ibid. § 63.

12. If a dog, after such notice to its owner or keeper, shall by such assault wound or cause to be wounded any person, or shall worry, wound, or kill any neat cattle, sheep, or lambs, or do any other mischief, the owner or keeper shall be liable to pay to the person injured thereby treble damage, to be recovered in an action of tort.

Towns liable  
for loss in cer-  
tain cases,

13. Whoever suffers loss by reason of the worrying, maiming, or killing of his sheep, lambs, or other domestic animals, by

dogs, may within thirty days after he knows of such loss, present proof thereof to the mayor or selectmen of the city or town where the damage is done; and thereupon said officers shall draw an order in favor of the owner upon the treasurer of said city or town for the amount of such loss. The treasurer shall register such orders at the time of their presentation, and annually on the first day of January pay them in full, if the gross amount received by his city or town under the provisions of this chapter relating to dogs, and not previously paid out, is sufficient therefor; otherwise he shall divide such amount *pro rata* among such orders, in full discharge thereof. After such order has been drawn, the city or town may in an action of tort recover against the keeper or owner of any dog concerned in doing the damage the full amount thereof.

may recover of owner.  
G. S. 88, § 61.

14. The owner of sheep, lambs, or other domestic animals worried, maimed, or killed by dogs, shall have his election whether to proceed under the provisions of the preceding section or of sections ten, eleven, and twelve; but having signified such election, by commencing a suit or obtaining an order, he shall not have the other remedy.

Person damaged to have choice of remedy,  
Ibid. § 65.

15. The mayor and aldermen of each city, and the selectmen of each town, shall require all dogs not licensed and collared according to the foregoing provisions, to be destroyed, and shall enforce all penalties herein provided. Any officer refusing or neglecting to perform the duties herein imposed upon him, shall be punished by fine not exceeding twenty-five dollars, to be paid into the city or town treasury.

Officers to kill unlicensed dogs.  
Ibid. § 66.

16. The city council of any city, and the inhabitants of any town, may make such additional by-laws and regulations concerning the licensing and restraining of dogs, as they deem expedient, and may affix any penalties, not exceeding ten dollars, for any breach thereof; but such by-laws and regulations shall relate only to dogs owned or kept in such city or town; and the annual fee required for a license shall in no case be more than one dollar in addition to the sum required by section one.

Cities and towns may make by-laws, &c. Fees for license.  
Ibid. § 67

17. Any person becoming the owner or keeper of a dog not duly licensed, on or after the first day of May, shall cause said

How dogs may be licensed after May 1,

1863, 113. dog to be registered, numbered, described, and licensed until the first day of the ensuing May, in the manner, and subject to the terms and duties prescribed in section one; and if he shall fail so to do, he shall forfeit ten dollars, to be recovered by complaint, to the use of the place wherein the dog is kept.

Fines, &c., how recovered,  
G. S. 88 § 68. 18. All fines and penalties provided in the seventeen preceding sections, may be recovered on complaint before any police court or trial justice in the county where the offence is committed.

ORDINANCE.<sup>1</sup>

Proceedings in case any dog shall disturb the quiet of any persons, by barking, &c. June 4, 1850. On complaint being made to the mayor, of any dog within this city which shall, by barking, biting, howling, or in any other way or manner, disturb the quiet of any person or persons whomsoever, the mayor shall issue notice thereof to the person owning, keeping, or permitting such dog to be kept; and in case such person shall neglect to cause such dog to be forthwith removed and kept beyond the limits of the city, or destroyed, he shall forfeit and pay one dollar for every day during which such neglect shall continue after such notice; *provided*, that the justice before whom the complaint respecting such dog shall be heard and tried, shall be satisfied that such dog had in a manner aforesaid disturbed the quiet of any person or persons in the said city.

Proviso.

## EAST BOSTON.

## STATUTE.

1. East Boston Company authorized to hold Noddle's Island. Proviso. Authority to sell, lease, &c., con-

2. Corporation shall set apart land for public purposes.

City lands in East Boston.

The East Boston Company, by deed dated August 12, 1836, conveyed to the city of Boston a lot of land on Paris Street, used for a watch-house; and by deed dated July 13, 1838, a lot of land on Bennington Street, used as a cemetery, and another

<sup>1</sup> An ordinance restraining the going at large of dogs in the city of Boston, passed June 4, 1850.

on Meridian and Paris Streets, used for a school-house ; in conformity with their act of incorporation. (See Suffolk Registry of Deeds, Lib. 409 fol. 89, and Lib. 433, fol. 161. For Public Squares, see *Commons*, &c. ; Wooden Buildings in East Boston, see *Buildings*.)

## STATUTE.

1. In the act to incorporate the East Boston Company, in the city of Boston, passed March 25, 1833, it is provided that said corporation may purchase, hold, and possess, in fee-simple or otherwise, all or any part of that island situate in the city of Boston, known by the name of Noddle's Island, with all the flats around the same, and the privileges and appurtenances thereto appertaining, and all rights, easements, and watercourses therewith used and enjoyed, and to the proprietors of said island belonging ; with such personal property as may be necessary for the proper conducting of the affairs of said corporation ; *provided*, that the whole real and personal estate of said corporation shall not exceed in value the sum of five hundred thousand dollars ; and *provided*, that the lawful owners or proprietors of such estates shall convey the same to said corporation. And said corporation shall also have power to sell and convey, lease, mortgage, or otherwise dispose of said corporate property, or any part thereof, and to manage and improve the same at its will and pleasure, with authority to construct dams, docks, wharves, and buildings, and to lay out streets and passageways within the limits of said island, as it shall deem expedient.

East Boston Company authorized to hold Noddle's Island. 1833, 152, § 2.

Proviso.

Authority to sell, lease, &c., construct dams, docks, wharves and buildings.

To lay out streets, &c.

2. Said corporation shall set apart on said island, in such place or places thereon as the mayor and aldermen of the city of Boston may designate, a portion of land, not exceeding in the whole four acres, free of expense to the city, for the purpose of providing proper sites for engine houses, school-houses, burial-grounds, and for other public purposes ; *provided*, that no lot, except the lots for burial-grounds, shall contain more than ten thousand feet, without the consent of this corporation ; and *provided, further*, that said mayor and aldermen shall designate the land so to be taken, within six weeks from March 25, 1833.

Corporation shall set apart land for public purposes. Ibid. § 4.

Proviso.

## ELECTIONS.

## QUALIFICATIONS OF ELECTORS.

## STATUTES.

1. Qualifications of voters at town, county, and other elections.
2. Collectors of taxes to keep a list of persons who have paid their taxes, and upon request to give receipts.
3. Mayor and aldermen and selectmen to make and post up lists of voters.
4. To be in session for receiving evidence of qualifications, and to give notice thereof

5. Sessions of mayor and aldermen and selectmen in places where voters exceed one thousand.
  6. Provisions as to correcting lists of voters.
  7. Naturalization papers to be produced for inspection.
  8. Penalty for giving false answers.
  9. Mayor and aldermen and selectmen, when not answerable for omissions.
  10. Penalty for wilful neglect by city or town officers.
- ORDINANCE, see p. 160.

## STATUTES.

Qualifications of voters at town, county, and other elections.

Amend. Const. art. 3, 20, 23.  
G. S. 6, § 1.  
11 Pick. 538.  
5 Met. 162, 208, 591.  
7 Gray, 299.

1. Every male citizen of twenty-one years of age and upwards, (except paupers, persons under guardianship, and persons excluded by articles twenty and twenty-three<sup>1</sup> of the Amendments to the Constitution,) who has resided within the State one year, and within the city or town in which he claims a right to vote six months next preceding any election of city, town, county, or state officers, or of representatives to congress, or electors of president and vice-president, and who has paid, by himself, his parent, master, or guardian, a state or county tax assessed upon him in this State within two years next preceding such election, and every citizen exempted from taxation but otherwise qualified, shall have a right to vote in all such elections; and no other person shall have such right to vote.

Collectors of taxes to keep list of persons who have paid taxes, and to give receipt.  
G. S. 6, § 2.

2. The collectors of state and county taxes in each city and town shall keep an accurate account of the names of all persons from whom they receive payment of any state or county tax, and of the time of such payment; and upon request shall deliver to the person paying the same a receipt specifying his name and

<sup>1</sup> Article twenty-three of the Amendments to the Constitution, relating to persons of foreign birth, was repealed in 1863.

time of payment ; and such receipt shall be admitted as presumptive evidence thereof. G. S. 6, § 2.

3. The mayor and aldermen and selectmen of cities and towns shall, at least ten days before the annual city and town elections and at least ten days before the Tuesday next after the first Monday in November annually, make correct alphabetical lists of all the persons qualified to vote for the several officers to be elected at those periods, and shall at least ten days before said elections cause such lists to be posted up in two or more public places in their respective cities and towns. Mayor and aldermen and selectmen to make and post up lists of voters. Amend. Const. art. 15. G. S. 6, § 5.

4. The mayor and aldermen and selectmen shall be in session at some convenient place for a reasonable time, within forty-eight hours next preceding all meetings for the elections of the officers aforesaid, for the purpose of receiving evidence of the qualifications of persons claiming a right to vote in such elections, and of correcting the lists of voters. Such session shall be holden for one hour at least before the opening of the meeting on the day of the election, and notice of the time and place of holding the sessions shall be given by the mayor and aldermen and selectmen upon the lists posted up as aforesaid. To be in session for receiving evidence of qualifications, and to give notice thereof. Ibid. § 6. 10 Cush. 143.

5. In every place where the number of qualified voters exceeds one thousand, a like session of the mayor and aldermen or selectmen shall be holden on the day immediately preceding the meeting, and for as much longer time previous to said day as they judge necessary for the purpose aforesaid. When the day immediately preceding such meeting is Sunday, such session shall be holden on the Saturday preceding. Sessions in places where voters exceed one thousand. G. S. 6, § 7.

6. The selectmen shall also enter on such lists the name of any person known to them to be qualified to vote, and shall erase therefrom the name of any person known to them not to be qualified. Correcting lists of voters. Ibid. § 8.

7. The mayor and aldermen and selectmen before entering upon the lists the name of a naturalized citizen, shall require him to produce for their inspection his papers of naturalization and be satisfied that he has been legally naturalized ; but they need not require the production of such papers after they have once examined and passed upon them. Naturalization papers to be produced, &c. Ibid. § 9. Amend. Const. art. 23.

Penalty for giving false answers.  
G. S. 6, § 10.

8. Whoever gives a false name or a false answer to the mayor and aldermen or selectmen when in session for the purposes aforesaid, shall forfeit the sum of thirty dollars for each offence.

Selectmen, &c., when not answerable.  
Ibid. § 11.

9. The mayor and aldermen and selectmen, if they have duly entered on said lists the names of all persons returned to them by the collectors, shall not be answerable for any omissions therefrom.

Penalty for neglect, &c., by town officers.  
Ibid. § 12.  
Greenl. 411.  
East. 563.  
Johns, 114.  
N. H. 88.

10. A city or town officer who wilfully neglects or refuses to perform any duty required of him by the provisions of this chapter, shall for each offence forfeit a sum not exceeding two hundred dollars.

11 S. & R. 35. 11 Mass. 350.

#### CONDUCTING ELECTIONS AND RETURNING VOTES.

##### STATUTES.

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| <ol style="list-style-type: none"> <li>1. Elections not to be held on days fixed by law for military duty.</li> <li>2. Meetings, when to be opened. Selectmen, &amp;c., to decide whether officers shall be voted for on one or on separate ballots.</li> <li>3. Meetings, how called, time to be kept open.</li> <li>4. Secretary of commonwealth to provide envelopes.</li> <li>5. City and town clerks to procure envelopes from secretary.</li> <li>6. Selectmen and ward officers to provide envelopes at polls on the day of election.</li> <li>7. Persons fraudulently obtaining envelopes liable to a fine.</li> <li>8. Manner of depositing votes, &amp;c.</li> <li>9. Votes when to be rejected, &amp;c.</li> <li>10. Results of elections, how determined. No choice in certain cases.</li> <li>11. Selectmen and ward officers to count votes.</li> <li>12. Mayor and aldermen and clerk to examine returns, and if faulty require new returns. Other regulations.</li> </ol> | <ol style="list-style-type: none"> <li>13. City and town clerks to make returns of votes to secretary, &amp;c.</li> <li>14. When return is unsealed, secretary to give notice to returning officers, who shall transmit a sealed copy.</li> <li>15. Secretary to furnish blanks, &amp;c., to cities and towns.</li> <li>16. Penalty for voting if not qualified.</li> <li>17. Penalty for giving more than one ballot.</li> <li>18. Penalty for giving false answers.</li> <li>19. Penalty for attempting to influence voters by bribery or threats.</li> <li>20. Penalty for aiding unqualified persons to vote.</li> <li>21. Penalty for disorderly conduct at elections.</li> <li>22. Penalty on town or city officers for neglect of duty.</li> <li>23. Penalty on clerks neglecting to return votes.</li> <li>24. Elections in cities.</li> <li>25. Ballots after being counted to be sealed up, &amp;c.</li> <li>26. Ballots when sealed up to be sent to city clerk, &amp;c.</li> </ol> |
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| 27. City clerk to furnish seals, receive and keep the ballots, &c. Ballots may be recounted and errors corrected. | 28. When right to vote is challenged, ballot to be indorsed.<br>29. Penalty on city clerk or other officer for neglect of duty.<br>ORDINANCE, see p. 160. |
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1. No meeting for the election of national, state, district, county, city, or town officers shall be held on a day upon which the militia of the commonwealth are by law required to do military duty. Elections not to be held on days designated for military duty. G. S. 7, § 1.

2. Meetings for the election of national, state, district, and county officers may be opened as early as nine o'clock in the forenoon, and shall be opened as early as two o'clock in the afternoon of the election day; and the mayor and aldermen and selectmen shall decide whether such officers shall be voted for on one ballot or at the same time on separate ballots, and shall give notice thereof in the warrant calling the meeting. Meetings, when to be opened. Officers to be voted for on one or on separate ballots. Ibid. § 2.

3. Such meetings in towns shall be called by the selectmen in the manner ordered by the towns, and in cities according to the provisions of the acts establishing them and the acts in addition thereto; and the warrant for notifying such meetings shall specify the time when the polls for the choice of the several officers shall be opened, and the same shall be kept open at least two hours, and in towns for such longer time as a majority of the voters present shall by vote direct; but in no case shall the polls be kept open after the hour of sunset. Meetings, how called, time to be kept open. Ibid. § 3. City charters. See G. S. c. 9, § 10.

4. The secretary of the commonwealth shall provide and keep constantly in his office a sufficient number of self-sealing envelopes to supply all the voters in the commonwealth, and shall furnish the same to the clerks of the several cities and towns when applied for. Such envelopes shall be of uniform size and color and bear the arms of the commonwealth, and no other envelopes shall be used at the polls. Secretary of commonwealth to provide envelopes. G. S. 7, § 4.

5. The city and town clerks shall obtain from the secretary such number of envelopes as may be sufficient to meet the wants of the voters of their respective cities and towns, and keep the same subject to the order of the selectmen of towns, or the wardens and inspectors of cities. Clerks to procure envelopes from secretary Ibid. § 5.

Selectmen, &c.,  
to provide enve-  
lopes at polls.  
G. S. 7, § 6.

6. The ward officers in each city and the selectmen of each town shall obtain from the city or town clerks and provide at the polls on the day of election a sufficient number of such envelopes, and supply each person claiming to be a voter in said city or town, on his personal application, with such number as the pending election may require, and return to the clerk all envelopes not used.

Fraudulently  
obtaining enve-  
lopes.  
Ibid. § 7.

7. Whoever wilfully claims to be a voter, knowing that he is not a voter where the claim is made, and by reason thereof fraudulently obtains an envelope from the persons having the custody of the same on the day of the election, shall be liable to a fine of not less than ten nor more than fifty dollars.

Votes, how de-  
posited.  
Ibid. § 12.  
23 Pick. 308.

8. No vote shall be received by the presiding officers at any election provided for in this chapter, unless presented for deposit in the ballot-box by the voter in person in a sealed envelope, or open and unfolded, and so that such officers can know but one ballot is presented.

Votes, when to  
be rejected, &c.  
G. S. 7, § 13.

9. Votes for different persons for the same office found in one envelope shall not be counted, and if more than one vote for the same person for the same office is found in one envelope, but one such vote shall be counted, and no vote shall be counted which does not clearly indicate in writing the office for which the person voted for is designed, except when but one officer is voted for.

Results of elec-  
tions, how de-  
termined.  
Ibid. § 14.  
Amend. Const.  
art. 14.

10. In all elections of civil officers by the people, the person or persons having the highest number of votes shall be deemed and declared to be elected; but no persons receiving the same number of votes shall be deemed to be elected, if thereby a greater number would be elected than required by law.

Selectmen and  
ward officers to  
count votes.  
G. S. 7, § 15.  
See G. S. c. 9,  
§§ 4, 12.  
See §§ 25-29,  
*post*.

11. The votes in elections for national, state, county, and district officers, shall be received, sorted, and counted, by the selectmen, and by the ward officers, and public declaration made thereof in open town and ward meetings. The names of persons voted for, the number of votes received for each person, and the title of the office for which he is proposed, shall be entered in words at length by the town and ward clerks in their

records. The ward clerks shall forthwith deliver to the city G. S. 7, § 15. clerks certified copies of such records, who shall forthwith enter the same in the city records.

12. The mayor and aldermen and the clerk of each city shall forthwith after an election examine the returns made by the returning officers of each ward in such city, and if any error appears therein they shall forthwith notify said ward officers thereof, who shall forthwith make a new and additional return, under oath, in conformity to truth, which additional return, whether made upon notice or by such officers without notice, shall be received by the mayor and aldermen or city clerk at any time before the expiration of the day preceding that on which by law they are required to make their returns or to declare the results of the election in said city; and all original and additional returns so made shall be examined by the mayor and aldermen and made part of their returns of the results of such election. In counting the votes in an election no returns shall be rejected when the votes given for each candidate can be ascertained.

Mayor and aldermen and clerk to examine returns and, if faulty, require new returns. Other regulations. Ibid. § 16. See G. S. c. 9, § 12. See §§ 25-29, *post*.

13. City and town clerks shall within ten days from the day of an election for governor, lieutenant-governor, councillors, senators, secretary, treasurer and receiver-general, auditor, attorney-general, representatives in congress, commissioners of insolvency, sheriffs, registers of probate and insolvency, district-attorneys, or clerks of the courts, transmit copies of the records of the votes, attested by them, certified by the mayor and aldermen or selectmen, and sealed up, to the secretary of the commonwealth; they shall in like manner within ten days after an election for county treasurer or register of deeds, transmit such copies of the records of the votes to the county commissioners of their several counties; and within seven days after an election for county commissioners, transmit such copies of the records of the votes to the clerks of the courts for their several counties; but in Suffolk the return of votes for register of deeds shall be made to the board of aldermen of Boston, and in Chelsea, North Chelsea, and Winthrop, the returns of votes for county commissioners shall be made to the clerk of the courts for the county of Middlesex. Or within three days after such elections, such

City and town clerks to make returns of votes to secretary, &c. G. S. 7, § 17. See G. S. c. 9, § 12.

G. S. 7, § 17. clerks may deliver such copies, sealed up, to the sheriffs of their several counties, who within seven days after receiving them shall transmit them to the office of the secretary, and to the county commissioners, board of aldermen, and clerks of courts, as severally above designated.

When return is unsealed, secretary to give notice to returning officers, who shall transmit a sealed copy. Ibid. § 19. 14. When a return of votes from a city or town is received at the office of the secretary of the commonwealth not sealed up as by law required, he shall forthwith give notice thereof to the returning officers; who upon the receipt of such notice shall make a copy of their record of the votes at said election and transmit the same, certified by them under oath to be correct, to the secretary, sealed up as required by law in the case of original returns. If such copy is received by the secretary before the day on which by law the returns are to be opened and the votes counted, and if upon opening said copy by the governor and council, the legislature, or any person authorized so to do, the original return is found in substantial conformity therewith, it shall not be rejected because of informality.

Secretary to furnish blanks, &c., to cities and towns. Ibid. § 20. 15. The secretary shall annually furnish to the several clerks of the cities and towns blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelopes as he deems necessary for the guidance and direction of such officers in making the returns according to law.

Penalty for voting, if not qualified. G. S. 7, § 28. 9 Met. 268. 16. Whoever knowing that he is not a qualified voter at an election wilfully votes for any officers to be then chosen, shall forfeit a sum not exceeding one hundred dollars for each offence.

Penalty for giving more than one ballot. G. S. 7, § 29. 17. If a voter knowingly gives more than one ballot at one time of balloting at an election, he shall forfeit a sum not exceeding one hundred dollars.

Penalty for giving false answers. Ibid. § 30. 7 Met. 52. 18. Whoever wilfully gives a false answer to the selectmen or moderator presiding at an election, shall forfeit for each offence a sum not exceeding one hundred dollars.

Penalty for attempting to influence voters by bribes or threats. 19. Whoever by bribery, or threatening to discharge from his employment, or to reduce the wages of, or by a promise to give employment or higher wages to, a person, attempts to

influence a qualified voter to give or withhold his vote in an election, shall be punished by fine not exceeding three hundred dollars or by imprisonment in the county jail or house of correction for a term not exceeding one year, or both, at the discretion of court. G. S. 7, § 31.

20. Whoever wilfully aids or abets any one, not legally qualified, in voting or attempting to vote at an election, shall forfeit a sum not exceeding fifty dollars for every such offence. Penalty for aiding unqualified persons to vote  
Ibid. § 32.

21. Whoever is disorderly in a meeting held for an election mentioned in this chapter, shall forfeit a sum not exceeding twenty dollars. Penalty for disorderly conduct  
Ibid. § 33.  
16 Mass. 385.

22. If a city or town officer wilfully neglects or refuses to perform the duties required of him respecting elections by the provisions of this chapter, he shall for each offence forfeit a sum not exceeding two hundred dollars. Penalty on town officers for neglect of duty.  
G. S. 7, § 34.  
See G. S. c. 6, § 12.

23. The clerk of any city or town who fails to make return of the votes given therein in conformity with the provisions of law, shall be liable to a fine of not less than five and not more than fifty dollars. Penalty on clerks.  
G. S. 7, § 35.

24. Elections in cities shall be conducted according to the provisions of the acts establishing them and of the several acts in addition thereto, so far as they are not inconsistent with the provisions of the preceding sections. Elections in cities.  
Ibid. § 36.

25. In all elections held within the cities of the commonwealth, whether the same shall be for United States, state, county, city, or ward officers, it shall be the duty of the warden, or other presiding officer, to cause all ballots which shall have been given in by the qualified voters of the ward in which such election has been held, and after the same shall have been sorted, counted, declared, and recorded, to be secured in an envelope, in open ward meeting, and sealed with a seal provided for the purpose; and the warden, clerk, and a majority of the inspectors of the ward, shall indorse upon the envelope for what offices and in what ward the ballots have been received, the date of the election, and their certificate that all the ballots given in by the voters of the ward, and none other, are contained in said envelope. Ballots after being counted to be sealed up, &c.  
1863, 144, § 1.  
See §§ 11, 12, ante.

Ballots when sealed up to be sent to city clerk.  
1863, 144, § 2.

City clerk to furnish seals, receive and keep the ballots.  
Ibid. § 3.  
Ballots may be recounted, and errors corrected.  
Ibid.

26. The warden, or other presiding officer, shall forthwith transmit the ballots sealed as aforesaid to the city clerk, by the constable in attendance at said election, or by one of the ward officers other than the clerk; and the clerk shall retain the custody of the seal, and deliver the same, together with the records of the ward and other documents, to his successor in office.

27. The city clerk shall cause to be furnished to the clerks of the several wards a seal of suitable device, the design of which shall include the number or designation of the ward for which it shall be furnished. He shall receive and retain in his care the ballots transmitted to him, for the space of not less than sixty days; if within the time prescribed by law for forwarding returns or declaring the results of an election, ten or more citizens of any ward shall notify the city clerk, by a written statement, that they have reason to believe that the returns of the ward officers are erroneous, and shall specify wherein they deem them in error, the said clerk shall receive such statement, and shall notify the board of aldermen, or the committee thereof appointed to examine the returns of said election, and the board of aldermen, or their committee, shall, within the time required by law for examining the returns or declaring the results of the election, examine the ballots thrown in said ward and determine the questions raised; they shall then re-seal the envelope, either with the seal of the city or a seal provided for the purpose, and shall indorse upon said envelope a certificate that the same has been opened and re-sealed by them in conformity to law; and the ballots sealed as aforesaid shall be returned to the city clerk, who, upon their certificate shall alter and amend such returns as are found to be erroneous, and such amended return shall stand as the true return of the ward. And if within sixty days of an election, any person who received votes for any office at said election shall serve upon the city clerk, by himself, his agent, or attorney, a written notification claiming an election to such office, and declaring an intention to contest the right of any person who has received or who may receive a certificate of election for the same, the city clerk shall retain such ballots, sealed as aforesaid, subject to the order of the body to which

such person shall claim to have been elected, or until such claim 1863, 144, § 3. shall have been withdrawn or finally decided.

28. Whenever in any election the right of any person offering to vote is challenged for any cause recognized by existing laws, it shall be the duty of the warden or presiding officer, if the person challenging shall so demand, to require the person so offering to vote to write his name and residence upon the ballot so offered and challenged, and the warden or presiding officer shall add thereto the name of the person challenging the same, and the cause assigned therefor, before such ballot shall be received; and if such ballot shall be offered sealed, the writing as aforesaid may be upon the envelope covering the same, and the warden or other presiding officer, in the presence of the clerk and at least one inspector, shall mark and designate such ballot by writing thereon the name of the person by whom it was cast, before it is counted, and at the close of the election the same shall be returned to the envelope in which it was deposited; *provided*, that nothing contained in this section shall be so construed as to permit ward officers to receive any vote which by existing laws they are required to refuse.

29. If any city clerk shall wilfully neglect or refuse to comply with any of the requirements of this act, he shall be punished by a fine not exceeding two hundred dollars. And if any warden or other presiding officer, constable, or ward officer as aforesaid, shall wilfully neglect or refuse to comply with the provisions of this act, he shall be punished by a fine of not less than twenty, or more than two hundred dollars, or by imprisonment in the county jail for a term not exceeding one year.<sup>1</sup>

When vote is challenged vote to be indorsed. Ibid. § 4.

Penalty on clerk or other officer, for neglect of duty. Ibid. § 5.

<sup>1</sup> For other provisions relating to elections, see *Charter*, and Gen. Stats. cc. 8, 9, 10.

ORDINANCE.<sup>1</sup>

## ORDINANCE.

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|---|--|
| 1. Form of warrants for ward meetings.<br>2. To be served by constables, and returned.<br>3. Form of warrants for general meetings. | 4. To be served by constables and returned.<br>5. Time of opening and closing the poll shall be fixed by the board of aldermen, and inserted in the warrant. |
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Form of warrants for ward meetings.  
Dec. 27, 1826.

SECTION 1. The form of warrants for calling meetings of the citizens of the several wards, shall be as follows, to wit:—

L. S. City of Boston.

To either of the constables of the city of Boston.

Greeting:

In the name of the Commonwealth of Massachusetts you are hereby required, forthwith, to warn the inhabitants of ward No. , qualified as the law directs, to assemble at on the day of at o'clock M. then and there to give in their ballots for

Hereof fail not; and have you there then this warrant with your doings thereon. Witness chairman of the board of aldermen of our said city of Boston, the day of in the year of our Lord

By order of the board of aldermen.

*City Clerk.*

To be served by constable and returned.  
Ibid.

SECT. 2. All warrants for calling meetings of the citizens of the several wards, which shall be issued by the board of aldermen, shall be served by any constable of the city, and returned to the wardens of the several wards in said city, on or before the time of meeting of the citizens of said wards therein specified.

<sup>1</sup> An ordinance prescribing the form of warrants and of the service thereof, passed December 27, 1826. See *Charter*, § 61.

SECT. 3. The form of warrants for calling meetings of the inhabitants of the said city of Boston, shall be as follows, to wit : —

Form of warrants for general meetings.  
Dec. 27, 1826.

L. S. City of Boston.

To the constables of the City of Boston.

Greeting :

In the name of the Commonwealth of Massachusetts, you are hereby required forthwith to warn the inhabitants of the city of Boston, qualified as the law directs, to assemble at Faneuil Hall, on the            day of            at            o'clock, M. then and there to

Hereof fail not ; and have you there then this warrant, with your doings thereon. Witness,            chairman of the board of aldermen of our said city of Boston, the            day of            in the year of our Lord

By order of the board of aldermen.

*City Clerk.*

SECT. 4. All warrants which shall be issued by the board of aldermen for calling meetings of the inhabitants of the city, shall be served by any constable of the city, and returned to the said board on or before the meeting of the citizens therein specified.

To be served by constables, and returned.  
Ibid.

SECT. 5. It shall be the duty of the board of aldermen to fix the time when the poll shall close, as well as the time for the opening thereof, in the election of all officers, and insert the same in any warrant and notification to the inhabitants, of such election.

Time of opening and closing the poll shall be fixed by the board of aldermen, and inserted in the  
Ibid. warrant.

## ENGINEER.

## ORDINANCE.

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| <ol style="list-style-type: none"> <li>1. Committee on the engineer's department to be appointed.</li> <li>2. City engineer to be chosen annually; tenure of office.</li> <li>3. He shall have charge of all plans</li> </ol> | <ol style="list-style-type: none"> <li>of streets, shall make all surveys, &amp;c.</li> <li>4. He may appoint an assistant, subject to the approval of the board of aldermen.</li> </ol> |
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ORDINANCE.<sup>1</sup>

Committee on the engineer's department to be appointed annually.  
March 21, 1863.

SECTION 1. In the month of January, in each year, there shall be appointed a joint committee of the city council, to be called the committee on the city engineer's department, to consist of two members of the board of aldermen and three members of the common council. The said committee shall have the care and supervision of the city engineer's office, and of all work done therein; shall have the power to appoint all necessary subordinate officers and assistants to be employed therein, except the assistant to the city engineer, and may fix the amount of compensation to be paid them respectively; *provided*, that the same shall not exceed, in the whole, the sum appropriated therefor by the city council.

City engineer to be chosen annually.  
Tenure of office.  
Oct. 31, 1850.

SECT. 2. There shall be chosen annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a city engineer, who shall be a citizen of Boston, and who shall hold his office for one year from the first Monday of April in the year in which he shall be chosen, and until his successor is chosen and qualified, or he is removed. He shall be removable at the pleasure of the city council, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation as the city council shall from time to time determine.

<sup>1</sup> Ordinance relating to the city engineer's department, passed October 31, 1850, and March 31, 1863.

The last three sections are taken from the "ordinance providing for the care and management of the Boston Water Works, being §§ 9, 11, 12 of said ordinance.

SECT. 3. The said city engineer, under the direction and control of the board of aldermen, shall have charge of all the plans of streets belonging to the city. He shall, by himself or his assistant, for whom he shall be responsible, make all such surveys, admeasurements, and levels, and perform such other services as may be required of him by the mayor, the board of aldermen, or any committee of the city council.<sup>1</sup>

To have charge  
of plans of  
streets.  
Oct. 31, 1850.  
To make all  
surveys, &c.

SECT. 4. The said city engineer may appoint an assistant, subject to the approval of the board of alderman, who shall receive such compensation as the city council may determine.

May appoint an  
assistant.  
Ibid.

## FANEUIL HALL.

## ORDINANCE.

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| 1. Superintendent to be appointed by the mayor with advice of the aldermen. Tenure of office. His general duties. | 2. To examine the apartments once a month.<br>3. To attend to the opening and closing of the hall. |
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Faneuil Hall was originally built by Peter Faneuil, and presented to the inhabitants for a market and town house. It was commenced September 8, 1740, and completed September 10, 1742; burned January 13, 1761, rebuilt in 1762, and much enlarged in 1805-6.<sup>2</sup>

History of  
Faneuil Hall.

ORDINANCE.<sup>3</sup>

SECTION 1. There shall be appointed annually, on the first Monday of February, or within sixty days thereafter, by the mayor, by and with the advice and consent of the board of

Superintendent  
to be appointed  
by mayor and  
aldermen. His  
general duties.

<sup>1</sup> For other duties of the city engineer, see title *Water*, post, §§ 9, 10,

<sup>2</sup> For a full history of "Faneuil Hall," and the powers and duties of the board of aldermen in the care and management of said hall, see City Doc. 1851, No. 33, and 1852, No. 48.

<sup>3</sup> An ordinance providing for the appointment of a superintendent of Faneuil Hall, passed October 14, 1833.

Oct. 14, 1833.  
1854, 448, § 49.

aldermen, a superintendent of Faneuil Hall, who shall hold his office for one year from the first Monday of April in the year in which he shall be appointed, and until his successor is appointed and qualified, or he is removed. He shall be removable at the pleasure of the mayor, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation as the city council may from time to time determine; whose duty it shall be to supervise and take proper care of said hall and all the rooms over the same and connected therewith, to attend to the admission of visitors, to provide that the said rooms are kept clean and in good order, and to report to the board of aldermen all repairs that may be necessary in the same.

To examine the  
apartments  
once a month.  
Oct. 14, 1833.

SECT. 2. It shall be the duty of said superintendent to examine at least once in each month, and as much oftener as he may deem expedient, the various apartments, comprising the armories, offices, and stores connected with said Faneuil Hall, for the purpose of ascertaining any danger that may exist from fire or other causes, and whenever he shall discover any such cause of danger to report the same to the board of aldermen.

To attend to  
the opening and  
closing of the  
hall.  
Ibid.

SECT. 3. It shall be the duty of said superintendent to attend to the opening and closing of said hall, at such hours and under such provisions as the board of aldermen may direct.

#### RULES AND REGULATIONS.<sup>1</sup>

Jan. 28, 1850.  
Feb. 18, 1850.  
Jan. 28, 1856.  
May 21, 1863.

1. Whenever the hall shall be used for the holding of any meeting, levees, or other purposes, on a petition signed by one hundred legal voters, there shall be paid to the city clerk, through the hands of the superintendent of the hall, the following prices, in advance:—

Fees.

For opening and closing the hall for a convention or for political meetings, six dollars a day.

For opening and closing the hall in the evening, for political or other meetings, including lighting and warming, eight dollars.

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<sup>1</sup> Rules and regulations relating to Faneuil Hall, passed by the mayor and aldermen January 28 and February 18, 1850, and by the board of aldermen January 28, 1856, and May 21, 1863.

For opening and closing the hall on an occasion where tickets are sold, or money taken, at the door, including lighting and warming, twelve dollars for a day, twenty-five dollars for an evening; and parties requiring the use of the hall for a dinner, shall pay in addition to the usual fee the sum of six dollars, to defray the expense of washing and cleaning the hall and floor.

For opening and closing the hall for a ball, including lighting and warming, twenty-five dollars.

2. No decorations shall be made in said hall without a special order from the board of aldermen. Fees. Jan. 28, 1850. Feb. 18, 1850. Jan. 28, 1853. May 21, 1863. Decoration. Ibid.

3. The police attending any meeting in said hall, shall be appointed by the board of aldermen, and the expense of the same shall be defrayed by the applicants. Police. Ibid.

4. The applicants shall be answerable, jointly and severally, for all damages done to the hall in the occupation of the same. Damages. Ibid.

## FANEUIL HALL MARKET.

### STATUTES.

1. Mayor and aldermen authorized to extend Faneuil Hall Market. Provisions respecting damages for land taken, &c.
2. Provisions and produce may be sold on street stands around Faneuil Hall Market under restrictions.
3. No prohibition by city of Boston during certain hours of the day, except, &c.
4. Repeal in part of previous ordinance.
5. Penalty for taking, killing, or having in possession certain birds at certain seasons.
6. Penalty for taking certain birds by traps, &c.
7. Penalty for killing birds on salt marshes, except, &c.
8. Penalty for killing, &c., grouse.

### ORDINANCE.

1. Superintendent of Faneuil Hall Market, how appointed.
2. Deputies appointed by superintendent. Their duties.
3. Duties of superintendent.
4. Limits of the market.
5. Superintendent to assign stands for carts and other carriages.
6. He and deputies may order carriages, horses, &c., to be removed, or cause them to be removed.
7. Horses, &c., to be taken from carriages, &c., by owner, or superintendent may remove them.
8. Butter to be sold by weight.
9. Fraudulent dealing or breach of this ordinance, how punished.
10. Stalls to be leased by written leases.

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| 11. Offal, &c., not to be thrown or remain in the stalls.<br>12. Offal, &c., not to be thrown into the passageways or on sidewalks. Stale meat, vegetables, &c., not to be sold or exposed. Superintendent may remove it. Penalty.<br>13. Stalls, &c., shall revert to the city when rent is not paid, or regulations are not complied with.<br>14. Poultry shall be dressed, &c.<br>15. Gaming, smoking, disorderly behavior, &c., prohibited. Penalty. | 16. Horses, carriages, &c., not permitted within limits of the market, except, &c. Penalty.<br>17. Passageways, &c., shall not be encumbered.<br>18. Street stands shall not be occupied, except, &c.<br>19. Street stands, what hours to be occupied.<br>20. Penalties.<br>21. Superintendent shall pay over moneys, and make quarterly report.<br>22. Other ordinances repealed. Proviso. |
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## STATUTES.

Mayor and aldermen authorized to extend Faneuil Hall Market.  
1823, 148.

Provisions respecting damages for land taken, &c.  
Ibid.

1. By an act of the legislature, passed February 21, 1824, the mayor and aldermen were authorized, whenever the city council should declare that the public exigences require that the limits of Faneuil Hall Market should be extended in any direction between Ann Street on the north, a line drawn from the east end of Faneuil Hall, on the west, south side of Faneuil Hall, and the lane leading to Greene's Wharf on the south, and the harbor on the east, to lay out and widen Faneuil Hall Market, within one year from the first day of April, 1824, in such direction within the limits aforesaid, not exceeding one hundred and eighty feet wide, as might be prescribed by the city council; *provided*, that the land taken, by virtue of this act, should never be used for any other purposes than those described in said act, without the previous consent of the legislature being obtained therefor. The act contained provisions for referring questions of damages for land taken and buildings removed for the purposes thereof; for petitions to the supreme judicial court for indemnity; the appointment of commissioners by the court; and a trial by jury in case either party should be dissatisfied with the award; with special authority for trustees, administrators, &c., to enter into references and take other measures respecting damages; and

provisions securing the proceeds to the persons for whom such estates were held in trust.<sup>1</sup> 1823, 148.

2. The city of Boston shall make no by-law, ordinance, or regulation, excluding from the occupation of street stands within the limits of Faneuil Hall Market, in said city, as the same are, or may be defined in the city ordinances, for the sale of fresh provisions, and perishable produce, any persons taking such stand for the sole purpose of selling such fresh provisions or perishable produce, provided the same are the product of the farm of the person offering them for sale, or of some farm within ten miles of the residence of such person ; or are to be sold at wholesale only, by the party offering them for sale on commission for, or as agent for some person or persons residing or having a usual place of business within eight miles of said market ; or are meats to be sold at wholesale only, by the person who slaughtered the animals of which the same was a part. Provisions and produce may be sold on street stands around Faneuil Hall Market under certain restrictions. 1859, 211, § 1.

3. The said city shall make no by-law, ordinance, or regulation prohibiting the occupation of stands within said limits, and the sale of fresh provisions and perishable produce, by the persons hereinbefore mentioned, between the hours of four o'clock in the afternoon and the time of closing said market at night, or before eleven o'clock in the forenoon, except on Sunday and holidays. No prohibition by city of Boston during certain hours of the day, except, &c. Ibid. § 2. 1860, 152, § 1.

4. Any existing by-laws, ordinances, or regulations inconsistent herewith are hereby repealed ; but this act shall not be construed to repeal or prevent reasonable rules of police, needful for the decorum, convenience, and good order of the market, and those who buy and sell therein. Repeal in part of former ordinances. 1859, 211, § 3.

5. Whoever between the first day of March and the first day of September takes, kills, or destroys, any of the birds called Penalty for taking, killing, or having in pos-

<sup>1</sup> The city council, by resolves passed March 11, 1824, declared that the public exigences required such extension ; and on July 22, 1824, the mayor and aldermen laid out and widened the said market, "in an easterly direction from said Faneuil Hall to the harbor, between two lines parallel to the walls of Faneuil Hall aforesaid, and running eastwardly towards the harbor, of which the north line shall be fourteen feet distant from the north side of said hall, and the south line shall be one hundred and eighty feet to the south of said north line." *City Records*, vol. 2, pp. 70, 294.

session, certain  
birds at certain  
seasons.

G. S. 82, § 1.

partridges or quails; or between the first day of March and the fourth day of July takes, kills, or destroys, any of the birds called woodcock; or at any season of the year takes, kills, or destroys, any of the birds called robins, thrushes, linnets, sparrows, bluebirds, bobolinks, yellow-birds, woodpeckers, or warblers; or within the respective times aforesaid sells, buys, or has in his possession, any of said birds taken or killed in this State or elsewhere, shall forfeit for every such partridge, quail, or woodcock, five dollars, and for every other of said birds, two dollars.

Penalty for  
taking certain  
birds by traps,  
&c.  
Ibid. § 2.

6. Whoever at any season of the year takes, kills, or destroys, by means of traps or snares, any of the birds mentioned in the preceding section, except partridges, shall forfeit for every such bird so taken, killed, or destroyed, five dollars.

Selectmen, &c.,  
to enforce pro-  
visions.  
Ibid. § 3.

7. The mayor and aldermen and selectmen of the several cities and towns shall cause the provisions of the preceding sections to be enforced in their respective places.

Penalty for kill-  
ing birds on salt  
marshes, ex-  
cept, &c.  
Ibid. § 5.

8. Whoever between the first day of March and the first day of July takes or kills any birds on any salt marshes, or sells any birds so taken or killed, shall forfeit two dollars for every offence; *provided*, that nothing contained in this section shall prevent the owner or occupant of such lands from taking or killing birds on the land so owned or held by him.

Penalty for kill-  
ing, &c., grouse.  
Ibid. § 6.

9. Whoever within this State takes, kills, or destroys, any of the birds called grouse or heath hens, or sells, buys, or has in his possession any of said birds so killed or taken, shall forfeit for every such bird twenty dollars.

#### ORDINANCE.<sup>1</sup>

Superintendent  
of Faneuil Hall  
Market ap-  
pointed, &c.  
June 3, 1859.

SECTION 1. The mayor and aldermen shall annually, on the first Monday of February or within sixty days thereafter, appoint a superintendent of Faneuil Hall Market, who shall hold his office for one year, from the first Monday of April in the year in which he shall be appointed, and until his successor is chosen and qualified, or he is removed. He shall be removed

<sup>1</sup> An ordinance in relation to Faneuil Hall Market, passed June 3, 1859.

at the pleasure of the mayor, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation for his services as the city council shall from time to time determine.

SECT. 2. The superintendent of Faneuil Hall Market shall, whenever authorized by the board of aldermen, employ one or more deputies, who shall be approved by the mayor, and who shall have power and authority to assist the superintendent in the execution of his office, and on any occasion, when said superintendent is not present, to officiate for him in his stead, and to perform his duties; but no deputy shall remain in office longer than during the approbation of the mayor; and the said superintendent shall be responsible for the conduct of each of his deputies, and such deputies shall receive such compensation for their services as the city council shall annually direct. The mayor and aldermen may invest the superintendent and his deputies with police powers.

His deputies,  
their appoint-  
ment and du-  
ties.  
Ibid.

SECT. 3. The superintendent of Faneuil Hall Market and his deputies shall, under the control of the board of aldermen, have the care and superintendence of said market; and it shall be their duty to preserve order in said market; to execute and carry into effect all the regulations, orders, and ordinances which may be duly made and established from time to time by the city council or the board of aldermen for the due regulation of the same; and keep open at all hours of every market day, after the hour of eight o'clock A. M., the south part of South Market Street, through the entire length of said street, to the width of thirty-five feet from the outside limits of the sidewalk of said South Market Street. This space shall be kept open and unobstructed for the passage of vehicles; and it shall be the duty of the superintendent and his deputies to enter and prosecute complaints for any violations of said regulations, orders, and ordinances.<sup>1</sup>

Duties of su-  
perintendent,  
&c.  
Ibid.

<sup>1</sup> It is not necessary that the [clerk] superintendent of the market before entering a complaint for violation of the regulations of the market, should have the direction of the mayor and aldermen to make such complaint. *Commonwealth, v. Rice*, 9 Met. 253.

Limits of the  
market.  
June 3, 1859.

SECT. 4. The limits of Faneuil Hall Market shall include the lower floor, porches, and cellars of the building called Faneuil Hall Market, and the streets on each side thereof, called North Market Street and South Market Street, except the northerly sidewalk of North Market Street, and the southerly sidewalk of South Market Street and shall also include all those parts of Commercial Street, together with the basement story and cellars under Faneuil Hall and Faneuil Hall Square, which lie between the inner lines of said sidewalks extended easterly and westerly across said street.

Superintendent  
to assign  
stands for carts  
or other car-  
riages.  
Ibid.

SECT. 5. The said superintendent and his deputies, under the direction of the board of aldermen, shall have the control of all carts, wagons, sleighs, and other vehicles and carriages within the limits of Faneuil Hall Market, and may assign stands within the limits of the said market for the sale of provisions and other articles; and no person shall occupy any stand other than such as may be assigned him.<sup>1</sup>

Superintend-  
ent or deputies  
may order car-  
riages, &c.,  
horses, &c.,  
to be removed,  
or cause them  
to be removed.  
Ibid.

SECT. 6. The said superintendent and his deputies shall have power and authority to remove from place to place within the limits (if the owners or possessors thereof neglect or refuse after request so to remove them, or if the owner or possessor be absent therefrom), all such carts, wagons, sleighs, carriages, and vehicles, with their contents remaining therein, and all horses and other beasts as shall be ranged or formed in any other manner than as directed by said superintendent or either of his deputies; and the owner or person having charge of any cart, wagon, sleigh, carriage, or other vehicle, or any box, barrel, cask, crate, basket, package, tub, or other vessel, whether empty or

<sup>1</sup> A by-law providing that no inhabitant of the city or any town in the vicinity thereof, not offering for sale the produce of his own farm, &c., shall, without the permission of the [clerk] superintendent of the market, be suffered to occupy any stand for the purpose of vending commodities, in certain streets which by the by-laws are a part of the market, was held to be a salutary police regulation, and not void as making a distinction between the inhabitants of the city and its vicinity, and those of distant towns, nor as being uncertain, nor as being in restraint of trade. *Nightingale's case*, 11 Pick. 168. The city government have an undoubted right to prohibit the occupation of a stand in the streets by any one, or by any one not having a license or permission for that purpose from the [clerk] superintendent of the market. *Ibid.* 171.

not, occupying any place within the limits of said market, shall, June 3, 1859. when directed by said superintendent or either of his deputies, remove the same with their contents, or cause the same with their contents to be removed without delay, to such place within the limits of the said market as the said superintendent or either of his deputies may direct; and in case of neglect or refusal so to do by such owner or possessor, or in case of their absence, so that the direction to remove cannot be given by said superintendent or either of his deputies and immediately complied with, the owner or possessor thereof shall be liable for the penalty herein-after mentioned for violation of this ordinance.

SECT. 7. All horses and other beasts shall be taken from the carts, wagons, sleighs, carriages, and other vehicles having provisions or articles of any kind for sale therein, and which shall stand within the limits aforesaid; and the same shall be conducted to a stable, or otherwise removed from said limits, by the owner or driver having charge of the same; and it shall be lawful for the said superintendent or either of his deputies, whenever he or either of them shall find any cart, wagon, sleigh, carriage, or other vehicle, or any ox, horse, or other beast standing or being within the said limits, abandoned and left unprotected, or found within the limits of the market on any part of the Lord's day or evening, to cause such cart, wagon, sleigh, carriage, or other vehicle, with its contents therein, and such ox, horse, or other beast, to be conducted to some stable or other suitable place; and the owner or person having the care or keeping thereof shall be liable to pay before the redelivery thereof to him, the entire cost and expense of the removal and keeping thereof during the time it shall be in said stable, or other suitable place, together with such further sum of money to the city, not exceeding two dollars, for the trouble arising in that behalf, as the said superintendent or either of his deputies shall demand, the same to be paid to and accounted for by said superintendent or his deputies to said city.

SECT. 8. All the butter brought within the limits of said market for sale, shall be sold by weight; and if it is in lumps, each lump shall contain one or more even or integral pounds, half or quarter pounds, weight; and the superintendent and his

Horses, &c., to be taken from carriages, &c., by owner, or superintendent may remove them.  
Ibid.

Butter to be sold by weight.  
Ibid.

June 3, 1859. deputies shall have power and authority to take and weigh all butter in lumps so exposed for sale in said market, and if found deficient in weight, to destroy the form of said lumps.

Fraudulent dealing or breach of this ordinance, how punished. Ibid.

SECT. 9. If any person shall, within the limits of said market, sell, or offer to sell, or exhibit for sale, any article which shall be deficient in the weight or measure for which he sells the same, or offers or exhibits the same for sale, or shall practise any fraudulent dealing within said limits, and shall be convicted thereof, he shall be liable to the penalty provided in the twentieth section of this ordinance.

Stalls to be leased by written leases. Ibid.

SECT. 10. The several stalls and cellars in said market shall be leased to the respective occupants by written leases, the conditions of which shall be prescribed by the board of aldermen; and the rent thereof shall be paid to the said superintendent of the market, or to such person as the board of aldermen shall appoint, and at such times as the board of aldermen shall determine; and such lessees shall not underlet the same, or any part of said stalls or cellars, nor permit the same or any part thereof to be occupied by any other person without the assent of the board of aldermen, under the penalty of forfeiting the right to their respective cellars, stalls, and leases.

Shall not be underlet. Ibid.

Offal, &c., not to be thrown, or remain in the stalls, &c. Ibid.

SECT. 11. The said lessees shall not throw, or permit to be thrown, or to remain within the precincts of their respective stalls or cellars, any offal, animal substance, scrapings, or any kind of dirt, filth, useless or offensive matter, but shall forthwith remove the same, or cause the same to be deposited in some tight vessel, to be approved of by the said superintendent or either of his deputies, and to be removed by said lessees as the said superintendent or either of his deputies shall direct.

Offal, &c., not to be thrown into the passageways or on sidewalks. Ibid.

SECT. 12. No person shall throw or sweep any offal, animal or vegetable substance, scrapings or sweepings, damaged salt, brine, or pickle, or foul water from the stalls or cellars into the passageways, or on the sidewalks, or into the streets adjoining said market-house, at any time during the day or night. Nor shall any person within the limits of said market sell, or offer to sell, or expose for sale, or have in his possession any meat, fish, bread, vegetables, tallow, skins, pelts, poultry, or other articles

Stale meat, vegetables, &c., not to be sold or exposed. G. S. 166, §§ 1, 2.

which in the opinion of said superintendent or either of his deputies shall be diseased, corrupted, tainted, or unwholesome ; but such person shall, when directed by said superintendent, or either of his deputies, forthwith remove all such articles from said limits to such suitable place as the said superintendent or either of his deputies shall order ; and if such person shall refuse or neglect to comply with such direction, or if the owner or person having charge of such articles be absent for more than one hour's time, the said superintendent or either of his deputies shall forthwith remove the same, or cause the same to be removed from said limits to such suitable place as aforesaid, at the expense of such person ; and if, in the judgment of said superintendent or either of his deputies it shall be necessary for the public health, it shall be their duty to destroy the same ; and if any person shall hinder, obstruct, or molest said superintendent or any of his deputies, or any person employed by either of them, in the premises, he shall be liable to the penalty provided in the twentieth section of this ordinance.

June 3, 1859.

Superintendent, &c., may remove it, &c.  
Ibid.Penalty.  
Ibid.

SECT. 13. When the lessee of any stall or of any cellar in said market-house shall, from any cause whatever, vacate the same, or shall receive notice from the board of aldermen to vacate the same, or shall neglect or refuse to pay his rent for the space of twenty-four hours, or shall neglect or refuse to comply with any regulations established for the good order and cleanliness of the said market-house and its entries, passageways, sidewalks, and the streets adjoining said house, the stall or stalls and cellar of such lessee shall thereupon revert to the city, and be at the disposal of the board of aldermen.

Stalls, &c., shall revert to city when rent is not paid, or regulations are not complied with.  
Ibid.

SECT. 14. No poultry shall be allowed to be sold or offered for sale in said market until the same shall be properly dressed, by removing the heads, crops, entrails, and feathers.

Poultry shall be dressed, &c.  
Ibid.

SECT. 15. No person shall, within the limits of Faneuil Hall Market, play at any game, or lie down, or sleep, or be have in a disorderly, noisy, or riotous manner, or scuffle, or throw any missile or thing whatsoever ; nor shall any person, within the limits of said market smoke, or have in his possession, any lighted pipe or cigar ; nor shall any idle or disorderly

Gaming, smoking, disorderly behavior prohibited.  
Ibid.

June 3, 1859.

person, itinerant peddler, or transient person, making disturbance or noise, be allowed to frequent or tarry within the limits of said market, after being forbidden so to do by the superintendent or his deputy; and every person offending against the provisions of this section shall be liable, for each offence, to the penalties prescribed in the twentieth section of this ordinance.

Penalty.  
Ibid.

Horses, car-  
riages, &c., not  
permitted with-  
in limits of the  
market, except,  
&c.  
Ibid.

SECT. 16. No horse or other beast, and no cart, wagon, carriage, sleigh, or other vehicle shall be permitted to stand within the limits of said market on any part of the Lord's day or evening, nor shall any person continue to do any business within the limits of said market on any week-day after the hour prescribed for closing the market (except on the evenings immediately preceding Thanksgiving and Christmas days); nor on any evening after the closing of the market-house; and if any person shall place or leave any wagon, cart, carriage, sleigh, or other vehicle, box, barrel, crate, cask, or other vessel, empty or otherwise, within the limits of said market on any part of the Lord's day or evening, or on any week-day after the said hour for closing the market except on the evenings immediately preceding Thanksgiving and Christmas days, or on any evening after the closing of the market-house, he shall forfeit a penalty not exceeding fifty dollars; and the said superintendent, or either of his deputies, may cause the same to be removed in the manner provided in the sixth and seventh sections of this ordinance, or either of them.

Penalty.

Superintend-  
ent may re-  
move horses,  
&c.  
Ibid.

Passageways,  
&c., shall not  
be incumbered.  
Ibid.

SECT. 17. Lessees of stalls and occupants of stands shall not incumber the main passageway or cross passages within the said market-house, nor the passageways outside of said house, in front of the doorways and leading into the middle of the streets, nor any of the avenues leading to and from the said market, with any casks, barrels, meat, or other articles or incumbrances.

Street stands  
shall not be  
occupied, ex-  
cept, &c.  
Ibid.

SECT. 18. No person shall be allowed to occupy a street stand within the limits of the said market, unless for the sole purpose of selling fresh provisions or perishable produce, the product of the farm of the person offering them for sale, or of some farm within ten miles of the residence of such person; or

of offering the same for sale at wholesale, on commission for or June 3, 1859.  
as agent for some person or persons not residing or having a  
usual place of business within eight miles of said market; and  
meats shall be sold at wholesale only by the person who  
slaughtered the animals of which the same were a part.

SECT. 19. Any person occupying a street stand within the Street stands,  
what hours to  
be occupied.  
Ibid. limits of the said market, for the sale of fresh provisions and  
perishable produce, between the hours of eleven o'clock in the  
forenoon and four o'clock in the afternoon, and between the hour  
of closing the said market at night and the morning of the next  
day, unless permitted so to do by the superintendent or his dep-  
uty, shall be liable to the penalty hereinafter mentioned for a  
violation of this ordinance.

SECT. 20. Every person offending against any of the pro- Penalties,  
Ibid. visions of this ordinance except as otherwise specially provided  
in any section thereof, shall forfeit and pay a sum not less than  
two dollars, nor more than fifty dollars for each offence, to be  
recovered on complaint before the police court of the city of  
Boston.

SECT. 21. The said superintendent shall pay over all moneys Superintend-  
ent shall pay  
over moneys.  
Ibid. by him received to the city treasurer as soon as received by him,  
and shall make a quarterly report to the board of aldermen of  
all sums so received and paid over.

SECT. 22. An ordinance providing for the appointment of a Other ordinan-  
ces repealed.  
Ibid. superintendent of Faneuil Hall Market, passed October 14,  
1833, and all other ordinances inconsistent herewith, are hereby  
repealed; *provided, however*, that the passage of this ordinance Proviso.  
shall not affect any act done or any right accruing or accrued,  
or established, or any suit or proceeding had or commenced in  
any civil case, nor any offence committed, nor any penalty or  
forfeiture incurred, nor any suit or prosecution pending for any  
offence committed, or for the recovery of any penalty or forfeit-  
ure incurred under any of said ordinances hereby repealed; and  
all persons who hold any office under said ordinance shall con-  
tinue to hold the same according to the tenor thereof; and no  
ordinance which has heretofore been repealed shall be revived  
by the repeal before mentioned.

## FENCES AND FENCE VIEWERS.

## STATUTES.

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. What shall be a legal fence.</li> <li>2. Adjoining occupants to maintain fences.</li> <li>3. Proceedings when a party neglects, &amp;c.</li> <li>4. Remedy against adjoining owner, &amp;c., for repairing, &amp;c., deficient fence.</li> <li>5. Controversies between parties about repairing, &amp;c., how determined.</li> <li>6. Double damages in case, &amp;c.</li> <li>7. Fence viewers may order compensation for repairing more than just share.</li> <li>8. Partition fences, how kept.</li> <li>9. How and where made when lands are bounded by water.</li> <li>10. Where lands have been improved without partition fences, division may be made.</li> <li>11. Fence viewer may determine whether fence is required; may employ a surveyor; line fixed to</li> </ol> | <ol style="list-style-type: none"> <li>be considered the true line till otherwise decided by court, &amp;c.</li> <li>12. If the line is altered by the court, fence viewers may order removal of fence to the new line, &amp;c.; fees and expenses, how recovered.</li> <li>13. Fences to be maintained by agreement of parties or assignment of fence viewers. Lands may be laid common by giving notice.</li> <li>14. When one party lays open enclosed lands, the other may purchase right in fence.</li> <li>15. Where unimproved lands are afterwards enclosed, &amp;c., party benefited shall pay, &amp;c.</li> <li>16. Fence viewers, when fences are on town lines.</li> <li>17. Where water fence is necessary, how made.</li> <li>18. Penalty for fence viewers' neglect of duty.</li> <li>19. Fees of fence viewers, by whom to be paid and how recovered.</li> </ol> |
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## STATUTES.

What shall be a legal fence.  
G. S. 25, § 1.

1. Fences four feet high and in good repair, consisting of rails, timber, boards, or stone, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things which the fence viewers within whose jurisdiction the same shall lie shall consider equivalent thereto, shall be deemed legal and sufficient fences.

Adjoining occupants to maintain fences.  
Ibid. § 2.  
2 Met. 180.  
4 Met. 589.  
4 Gray, 220.  
Proceedings when a party neglects, &c.

2. The respective occupants of lands enclosed with fences shall, so long as both parties improve the same, keep up and maintain partition fences between their own and the next adjoining enclosures, in equal shares.

3. If a party refuses or neglects to repair or rebuild a partition fence which he ought to maintain, the aggrieved party may

complain to two or more fence viewers of the place, who, after due notice to each party, shall survey the same, and if they determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant, and direct him to repair or rebuild the same within such time as they judge reasonable, not exceeding fifteen days; and if the fence shall not be repaired or rebuilt accordingly, the complainant may make or repair the same.

4. When a deficient fence built up or repaired by a complainant as provided in the preceding section is, after due notice to each party, adjudged sufficient by two or more of the fence viewers, and the value thereof with their fees ascertained by a certificate under their hands, the complainant may demand either of the occupant or owner of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the same so due, for one month after demand, he may recover the same with interest at one per cent. a month, in an action of contract.

Remedy against adjoining owner, &c., for repairing, &c., deficient fence.  
G. S. 25, § 3.  
14 Pick. 276.  
11 Met. 496.  
G. S. 25, § 4.  
6 Mass. 95.  
5 Pick. 503.  
14 Pick. 276.

5. When a controversy arises about the rights of the respective occupants in partition fences and their obligation to maintain the same, either party may apply to two or more fence viewers of the places where the lands lie, who, after due notice to each party, may, in writing, assign to each his share thereof, and direct the time within which each party shall erect or repair his share, in the manner before provided; which assignment, being recorded in the city or town clerk's office, shall be binding upon the parties and upon the succeeding occupants of the lands; who shall thereafter maintain their respective parts of said fence.

Controversies between parties about repairing, &c., how determined.  
G. S. 25, § 5.  
11 Met. 496.  
11 Cush. 450.

6. If a party refuses or neglects to erect and maintain the part of a fence assigned to him by the fence viewers, the same may in the manner before provided be erected and maintained by any aggrieved party; and he shall be entitled to double the value thereof ascertained and recovered in the manner aforesaid.

Double damages in case, &c.  
G. S. 25, § 6.  
11 Met. 496.

7. When in a controversy between adjoining occupants as to their respective rights in a partition fence, it appears to the fence viewers that either of the occupants had, before any complaint

Fence viewers may order compensation for repairing more than just share

G. S. 25, § 7.  
14 Pick, 276.  
11 Met. 496.

made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay the value of so much thereof as may be assigned to him to repair or maintain, to be ascertained and recovered as provided in this chapter.<sup>1</sup>

Partition fences, how kept.  
G. S. 25, § 8.

8. Partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise agree.

Partition fences, how and where made when lands are bounded by water.  
Ibid. § 9.  
11 Met. 496.

9. When lands of different persons which are required to be fenced, are bounded upon or divided from each other by a river, brook, pond, or creek, if the occupant of the land on one side refuses or neglects to join with the occupant of the land on the other side in making a partition fence on the one side or the other, or shall disagree respecting the same, then two or more fence viewers of the place or places wherein such lands lie, on application made to them, shall forthwith view such river, brook, pond, or creek; and if they determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence on the true boundary line without unreasonable expense, they shall, after giving notice to the parties to be present, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on the one side and partly on the other side, as to them shall appear just, and shall reduce their determination to writing; and if either of the parties refuses or neglects to make and maintain his part of the fence according to the determination of the fence viewers, the same may be made and maintained as before provided, and the delinquent party shall be subject to the same costs and charges to be recovered in like manner.

Where lands have been improved without partition fences, division may be made.  
G. S. 25, § 10.

10. When lands belonging to two persons in severalty have been occupied in common without a partition fence between them, and one of the occupants desires to occupy his part in severalty, and the other occupant refuses or neglects on demand to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the party desiring it

<sup>1</sup> Gen. Stats. c. 25, to be found in the text.

may have the same divided and assigned by two or more fence viewers of the same place in the manner provided in this chapter ; and the fence viewers may in writing assign a reasonable time, having regard to the season of the year, for making the fence ; and if the occupant complained of does not make his part of the fence within the time so assigned, the other party may, after having made up his part of the fence, make up the part of the other, and recover therefor double the expense thereof, together with the fees of the fence viewers, as provided in the other sections. G. S. 25, § 10. See § 19.

11. Fence viewers when called to act under the provisions of the preceding section, shall have power to determine whether a partition fence is required between the lands of the respective occupants, and may, when the division line between their lands is in dispute, or unknown, designate a line on which the fence shall be built, and may employ a surveyor therefor, if necessary ; and such line shall, for the purpose of maintaining a fence, be deemed the division line between such lands, until it shall be determined by judicial proceedings, or otherwise, that the true line is in another place, and, until so determined, all provisions of law relating to the erection, maintenance, and protection of fences, shall be applicable to the fence erected, or to be erected, on such line. Fence viewers may determine whether fence is required ; may employ a surveyor ; line fixed to be considered the true line till decided by court. 1863, 190, § 1.

12. If, after a fence has been made upon a line thus designated, it shall be determined by judicial proceedings, or otherwise, that the true division line is in another place, each occupant shall remove his part of the fence to, and rebuild the same on such line ; and in case of neglect or refusal by either party to remove and rebuild his share thereof, the other may apply to two or more fence viewers, who, upon such application, shall view the premises and assign a time within which the fence shall be removed and rebuilt, and give the delinquent party notice thereof ; and if such party does not remove and rebuild the fence within the time so assigned, the other party may remove and rebuild the same, and recover double the expense therefore together with the fees of the fence viewers, to be ascertained and recovered in the manner provided in section four. If line is altered by court, fence viewers may order removal of fence to the new line ; fees and expenses, how recovered. Ibid. § 2. See § 19.

Fences to be maintained by agreement of parties or assignment of fence viewers. Lands may be laid common by giving notice. G. S. 25, § 11. 1 Cush. 15.

13. Where a division of fence between the owners of improved lands has been made either by fence viewers or under an agreement in writing between the parties, recorded in the office of the clerk of the city or town, the several owners of such lands, and their heirs and assigns, shall erect and support said fences agreeably to such division; but if a person lays his lands common and determines not to improve any part of the same adjoining the fence divided as aforesaid, and gives six months' notice of his determination to all the adjoining occupants of lands, he shall not be required to keep up or support said fence during the time that his lands lie common and unimproved.

When one party lays open enclosed land, the other may purchase right in fence. G. S. 25, § 12.

14. When one party ceases to improve his land or lays open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining to the next enclosure, *provided* the owner or occupant thereof will allow and pay therefor so much as two or more fence viewers in writing determine to be the reasonable value thereof.

Where unimproved lands are enclosed, &c., party benefited shall pay, &c. Ibid. § 13. 1 Cush. 11.

15. When land which has lain unenclosed is afterwards enclosed or used for depasturing, the occupant or owner thereof shall pay for one half of each partition fence standing upon the line between the same land and the land of the enclosures of any other occupant or owner, the value thereof to be ascertained in writing, (in case they do not agree between themselves,) by two or more of the fence viewers of the same place wherein such partition fence stands; and if such occupant or owner, after the value has been so ascertained, neglects or refuses, for thirty days after demand made, to pay for one half of the partition fence, the proprietor of the fence may maintain an action of contract for such value, and the costs of ascertaining the same; but the occupant or owner of unenclosed land on the island of Nantucket, used for depasturing only, shall not be subject to the foregoing provisions of this section.

Fence viewers, when fences are on town lines. G. S. 25, § 14.

16. Where the line upon which a partition fence is to be made or divided is the boundary line of one or more cities or towns, or partly in one and partly in another, a fence viewer shall be taken from each place.

17. When a water fence, or fence running into the water, is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party refuses or neglects to make or maintain the share to him belonging, similar proceedings shall be had as in other cases of the like kind respecting other fences before mentioned.

Water fences,  
how made.  
G. S. 25, § 15.  
11 Met. 496.

18. Any fence viewer duly chosen and sworn who, when requested, unreasonably neglects to view a fence, or to perform any other duties required of him in the preceding sections, shall forfeit five dollars, to be recovered by action of tort to the use of the place, or on complaint to the use of the commonwealth, and he shall also be liable for all damages to the party injured.

Penalty upon  
fence viewers  
for neglect of  
duty.  
G. S. 25, § 16.

19. Each fence viewer shall be paid at the rate of two dollars a day for the time he is so employed by all or by such of the parties in dispute, and in such proportions as shall be determined by a certificate in writing, under the hands of the fence viewers, acting in each case; and if any person or persons so required to pay the whole or any portion of said fees, shall neglect to pay the fence viewers within thirty days after the certificate has been delivered, the fence viewers may recover double the amount of the fees due from such delinquent party, in an action of tort.<sup>1</sup>

Fees of fence  
viewers, by  
whom to be  
paid. How  
recovered.  
Ibid. § 17.  
1862, 93, § 1.

<sup>1</sup> It is provided in the act of 1862, c. 93, § 3, that hereafter fence viewers shall be elected by ballot.

FERRIES.<sup>1</sup>

- |  |  |
|--|--|
| 1. Ancient ferries.  | 11. Petition for free ferries or reduced rates of toll.                      |
| 2. Present ferries.  | 12. Recommendation for the purchase rejected.                                |
| 3. Public ferries, how established.                                      | 13. Action in 1858.  |
| 4. Winnisimmet Ferry.  | 14. Appropriation for the purchase of ferries, conditions, &c., of purchase. |
| 5. The Winnisimmet Company may extend its wharves in Boston and Chelsea. | 15. New rates of toll.   |
| 6. East Boston ferries.  | 16. Report on the relations between the city and the ferry companies.        |
| 7. East Boston ferry companies incorporated.                             | 17. Action in 1861.  |
| 8. The city authorized to purchase the ferry.                            | 18. Action in 1862.  |
| 9. Rates of toll established.  |  |
| 10. People's Ferry Company established.                                  |  |

Ancient ferries. 1. Before the opening of the Charles River Bridge for public travel June 17, 1786, the only public means of direct communication between the peninsula of Boston and the northerly and easterly parts of the State was by ferries. These were established very soon after the settlement of Boston. The court of assistants, November 9, 1630, ordered the governor to permit the first applicant "to set up a ferry between Boston and Charlestown" at a certain rate of toll, and in 1631 it is stated that "Edward Converse hath undertaken to set up a ferry betwixt Boston and Charlestown." May 14, 1631, Thomas Williams set up a ferry between Winnisimmet and Charlestown and from Winnisimmet to Boston. In 1635 the general court ordered that there should be a ferry set up on Boston side, by Wind-mill Hill, to transport men to Charlestown and Winnisimmet; and in 1638 there was "a ferry appointed from Boston to Winnisimmet, Noddle's Island, and the ships — the person to be appointed by the magistrates of Boston." The rates of toll for ferries were from time to time prescribed by the general court.

Present ferries. 2. Since the erection of the bridges over Charles River,

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For statute provisions relating to ferries in this commonwealth, see Gen. Stat., c. 47

connecting Boston with the adjacent towns, the only public ferries existing connected with Boston, are the Winnisimmet Ferry, between Boston and Chelsea, and the East Boston Ferry and People's Ferry, between Boston and East Boston.

3. Public ferries being public highways, the authority to establish them in the county of Suffolk when the public convenience required, was vested prior to the city charter in the court of sessions or county commissioners, and since 1821 it has existed in the mayor and aldermen or board of aldermen. The legislature has always had the power to establish, regulate, and control ferries.

4. The Winnisimmet Company, incorporated in 1833, was empowered to purchase and hold any ferry or ferry rights between Boston and Chelsea; and to construct and maintain wharves and other works suitable and convenient for steam-boats and other vessels that may be used on any such ferry; but they were not authorized to build any bridge or dam over the channel of any public navigable waters, or otherwise permanently to obstruct the same. A penalty of not less than twenty dollars and not over one hundred dollars was imposed upon any person obstructing the passage of the boats or wilfully injuring the property of the corporation. Nothing in the act was "in any way to affect the power of the legislature to grant such other ferries as they lawfully might if this act had not been passed, nor to limit or affect in any way the right of the legislature to fix, regulate, and at their pleasure to change the rates of toll at any ferry owned or conducted by said corporation, or to authorize any other tribunal to do the same."

5. By the statutes of 1837, chapter 211, the Winnisimmet Company were authorized to extend their wharves, dock, and landing-place, situated near the foot of Hanover Street, Boston, into and over the tide waters of the harbor, with the right to use and occupy the flats within or adjoining the said wharves and structures when so extended; such wharves and structures not to extend beyond the commissioners' line, and not to be built otherwise than on piles within two hundred and twenty-five feet of said line. The act of 1846, chapter 166, 1846, 166.

Public ferries,  
how estab-  
lished.

Winnisimmet  
Ferry.  
1833, 197.

The Winnisim-  
met Company  
may extend its  
wharves, &c.,  
in Boston and  
Chelsea. 1837,  
211.

1846, 166.

authorized the company to extend its wharves and docks for the reception of the ferry boats at Chelsea, over the tide waters in the harbor, not exceeding sixty feet from the end of their wharves as there existing, by driving piles in front of said wharves, with the right to use and occupy the flats adjoining for the purposes of the ferry.

## EAST BOSTON FERRIES.

East Boston  
ferries.

6. The East Boston Company, incorporated in 1833, and owning all the land and water rights in East Boston, at once made arrangements for ferry communication with the city proper. They expended \$85,611 for boats, drops, slips, tanks, wharf, and landings; and appropriated 562,500 feet of land, valued then at \$56,250, for ferry purposes, all of which in 1835 they conveyed to certain associates, acting under a license from the mayor and aldermen, for \$66,000; stipulating as a part of the agreement with the purchasers, to make no conveyance of any wharf-lot on the island without the condition "that no ferry should ever be established or run from the premises." The ferry did not prove profitable, losing the first year \$22,000. In 1836 the Eastern Railroad Company obtained control of the stock, purchasing five hundred and seventy shares for \$57,000, the whole stock consisting of one thousand shares of \$100 each. In 1842 the East Boston Company arranged with all the proprietors in the ferry, other than the railroad corporation, to exchange their stock in the ferries, share for share, for stock in the land company, and thus became joint proprietor with the railroad in the ferry. The two companies maintained the ferry for the succeeding ten years, from 1842 to 1852, the aggregate receipts for that time being less than the expenditures by \$29,000.

East Boston  
Ferry Company  
incorporated.  
1852, 244.

7. In May, 1852, the East Boston Ferry Company was chartered for the term of twenty years, (the act to be void if the ferry was not opened in five years,) and purchased of the East Boston Company and the Eastern Railroad Company their interest and property in the existing ferry, at an appraisal of \$200,000, all except \$2,000 of which was paid in shares

and divided equally between the two corporations. The charter <sup>1852, 244.</sup> permitted the company to hold real and personal estate, necessary and convenient for the purposes of the ferry to an amount not exceeding \$ 300,000, and the stock was fixed at \$ 200,000, with the privilege of increasing it to \$ 300,000. By their charter <sup>Ibid, § 2.</sup> the company are obliged to furnish all such accommodation for the transportation of persons, horses, cattle, carriages, wagons, goods, and merchandise, as the mayor and aldermen of Boston shall from time to time consider that the public convenience requires, and are permitted to collect and receive such tolls as the mayor and aldermen shall determine; but the rates of ferryage are never to be so much lowered as to reduce the yearly dividends of said company to an amount less than eight per cent. on the amount of capital stock actually invested. The directors are to make returns, under a penalty of not over <sup>Ibid, § 6.</sup> \$ 500, from year to year, to the mayor and aldermen under oath of their acts and doings, receipts and expenditures, specifying the several items making up said expenditures; and the books are at all times to be open to the inspection of any committee of the mayor and aldermen appointed for that purpose.

8. The city is authorized to purchase the ferry, its franchise and property, at any time during the continuance of its charter, by paying such a sum as will reimburse the amount of capital paid in, with a net profit thereon, as may be agreed on, of not over ten per cent. per annum, from the time of the payment thereof by the stockholders to the time of such purchase. Scrip, called "Boston Ferry Scrip," to an amount not exceeding \$ 500,000, and bearing not over six per cent. interest, may be issued for the purchase. In case of purchase the city will take all the rights and liabilities of the company; and when it is reimbursed from tolls collected for the cost of the purchase and the expenses of its management, and has established a fund for the future support of the ferry, the tolls are to cease, and the ferry be maintained by the city as a free ferry; authority being given to the city council to re-establish the rates of toll when the fund shall be found insufficient for the support of the ferry.

The city authorized to purchase the ferry.  
Ibid. §§ 9, 11.

Ferry, when to be free.  
When tolls may be re-established.

Rates of toll  
established,  
and receipts.

9. The mayor and aldermen established rates of toll in October, 1852, which were substantially the same as had been for many years received under the license to the former company. Under these rates in 1853, the excess of the receipts over the expenditures was \$19,506.50; the expenditures being \$78,005.88.

People's Ferry  
Company estab-  
lished.  
1853, 422.

10. In May, 1853, the People's Ferry Company was incorporated with a charter substantially identical with that of the East Boston Ferry Company. It commenced operations October 12, 1854, with two boats, adding soon after a third; and on the 26th of the following December, the rates of toll were established by the mayor and aldermen. The first year both ferries were in operation, their expenditures exceeded \$100,000, while the amount realized by both was only \$88,156.17. The second year their receipts were \$112,000, with an expenditure of about \$95,000. Both companies became involved in debt, and in 1856 they petitioned the mayor and aldermen for higher rates of toll. The petition was denied, and the corporation established for themselves rates of toll about forty per cent. higher than they were legally entitled to receive, and entered into mutual obligations to take no lower rates.

Rates of toll.

Petition for  
free ferries or  
reduced rates of  
toll.  
City Doc. 1857,  
No. 68.

11. In the summer of 1857, the petition of Joseph H. Adams and eight hundred and seventy others, citizens of Boston, was presented to the board of aldermen "asking that body to free the ferries between Boston and East Boston, or render such aid to the ferries as will cause a reduction in the present rates of toll." A lengthy report was submitted upon this petition in August, 1857, recommending that the two companies unite or come to some concert of action, that they run no more boats than may be necessary, and return to the old rates of toll established by law; and that when the two companies should be united, or when they, or either of them, should return to the old rates of toll, it would be expedient for the board of aldermen under their powers as county commissioners, when requested so to do by the corporations, or by either of them, to lay out public avenues to the ferry slips over the lands of said corporations.

Recommendations

12. The recommendations of the committee were not

adopted by the city council, and in November, 1857, the committee were instructed to apply to the ferry companies to furnish a schedule of the property held by them and the price for which the city could purchase the same. In the following December the committee reported the schedules of property and proposals received from both companies. This report was re-committed with instructions to the committee to report the terms upon which, in their judgment, the city should purchase the property. The committee, December 21, 1857, reported that they could not report upon any sum which should be paid for the franchise, &c., of the East Boston Ferry Company; but that it was expedient to purchase the franchise, &c., of the People's Ferry Company, at a sum not exceeding \$ 200,000. This recommendation was not adopted, and the matter was referred to the next city council.

tions for the  
purchase re-  
jected.  
City Doc. 1857,  
No. 80.

13. In March, 1858, a committee of the city council reported in favor of purchasing the property of the East Boston Ferry Company for \$ 90,000, and that of the People's Ferry Company for \$ 110,000; but the report was not adopted, and the purchase was not made. In the same year the companies mutually cancelled their agreements to keep up the tolls, and by competition between the companies, the tolls were in course of time reduced much below the rates established by law.

Action in 1858.

14. In 1859, after many hearings and much deliberations, the city council voted to appropriate \$ 250,000 for the purchase of the ferries, \$ 125,000 to be paid to each corporation. On the 4th March, 1859, the People's Ferry Company conveyed all its property, except its boats and its franchise, to the city for \$ 125,000, and gave a bond in the sum of \$ 100,000 to maintain and operate its ferry for ten years in such manner, at such rates of toll, and upon such terms and conditions as the board of aldermen should from time to time prescribe; to permit policemen and those connected with the fire department, and all city officers when on business for the city, to pass and repass free of toll; the company to have the use of the property conveyed by it to the city, so far as it may be needed for the purpose, without rent. The transaction

Appropriation  
for purchase of  
ferries.

Action in 1859. with the East Boston Ferry Company was not completed until November, 1859, when, for the \$125,000 it conveyed to the city certain real and personal property, and gave bond to the city in the sum of \$100,000, to maintain and operate the ferry for ten years upon terms substantially as those stipulated with the People's Ferry Company, and to allow the policemen, members of the fire department, and city officers on city business, to pass free of toll.

New rates of toll established. 15. For a few months only after the city had paid \$125,000 to each ferry, were matters harmonious. The ferries claimed that they could not sustain themselves at the rates of toll then taken, and raised them. The rates then existing were those established for the East Boston Ferry Company in 1852; and for the People's Ferry Company in 1854. Upon the raising of the rates, a committee of the board of aldermen was appointed to inquire into the matter, and this committee on the 23d July, 1860, reported an order establishing rates of toll for both ferry companies, to take effect from and after August 10, 1860, which order was unanimously passed by the board of aldermen the same day, and the rates of toll then established are those at present existing.

Report on relations between the city and the ferry companies. City Doc. 1863, No. 83. 16. In October, 1860, a committee of the city council was appointed to inquire into and report in print concerning the present relations of the city of Boston and the ferry companies, and all facts relating thereto. This committee presented an elaborate report in print, containing a representation of the facts connected with the ferries, accompanied by copies of some of the contracts between the city and the ferries, with abstracts of the titles of the property bought by the city of the ferry companies.

Action in 1861. City Doc. 1861, No. 71. 17. In January, 1861, the subject of the East Boston ferries was referred to a joint special committee, who made a report to the city council in December in that year. In the communications between the committee and the two ferry companies, propositions were made on the part of the People's Ferry Company to sell their boats, franchise, &c., and for a given sum to run one or more boats, at reduced rates of toll for five years. The East Boston

Company made no offer to sell their ferry property, but did Action in 1861. propose, for a certain annual sum, to operate their ferry about eight years, at reduced rates of toll. The committee, for the purpose of eliciting the views of the city council, reported orders proposing to pay to the People's Ferry Company fifty thousand dollars for their franchise and property, to lease the same property to those who were then directors of the company free of rent for five years, to make no charges for taxes or water, to pay the gas bills, and twelve thousand dollars a year at the end of each year that the boats have been run according to the agreement; the lessees to give satisfactory security to run the boats for five years at specified rates of toll, to pay all charges and expenses of running the boats, and to make as many trips as they were making. Another order proposed to pay the East Boston Company, for running their boats for eight years, twelve thousand dollars a year, at certain rates of toll, or seven thousand dollars a year for other rates of toll, together with what they might realize from the use and rents of the Eastern Railroad wharf, to pay the gas bills, and to abate the water rates and taxes. None of the orders reported by the committee were adopted by the council, and the year passed away without relief from the burdensome rates of toll.

18. The matter of the ferries was again before the city Action in 1862. council in 1862. In November of that year, the joint special City Doc. 1862, No. 83. committee on ferries made a report "as the history of the ferries for the present year," but no recommendations were made, and no orders reported for the action of the city council. The questions mainly discussed between this committee and the ferry companies, were the discontinuance of the People's Ferry Company, and the rates to be adopted in consequence thereof by the East Boston Ferry Company. After this report was made, the committee on streets, on the part of the council, with such as the board of aldermen might join, were, in December of that City Doc. 1862, No. 95. year, clothed with full power to negotiate with one or both of the ferry companies, to secure to the people of East Boston, and the public, for the longest time practicable, certain specified rates of toll, and the running of a night boat; and the sum of

Action in 1862.  
City Doc.  
No. 95.

five thousand dollars was appropriated to carry the order into effect. Propositions were received from both companies, and the result of the negotiation was an agreement made December 15, 1862, between the city and the People's Ferry Company, that the company would run their boats at the reduced rates of toll specified in the order appointing the committee, during four calendar months from January 1, 1863, for the sum of twelve hundred and fifty dollars a month. No arrangement was made with the East Boston Ferry Company.

For the first four months of 1863, the People's Ferry Company ran their boats according to their agreement, at the reduced rates of toll, and the city paid them the stipulated subsidy of twelve hundred and fifty dollars a month. During these four months the East Boston Ferry Company reduced their tolls for foot passengers to one cent, and since the expiration of the four months both companies have adopted the rate of one cent for foot passengers. With this exception, since May 1, 1863, both ferries have run their boats at substantially the old, high rates of toll.

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## FIELD DRIVERS; POUNDS AND IMPOUNDING OF CATTLE.

### STATUTES.

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|---|---|
| 1. Pounds to be provided by towns.<br>Penalty for neglect.  | 8. Beasts doing damage, may be<br>distrained.                                       |
| 2. Penalty for injuring pounds.   | 9. Beasts doing damage, to be im-<br>pounded.                                       |
| 3. Pound keeper to be appointed.  | 10. Persons distraining to state de-<br>mand.                                       |
| 4. Field drivers to take up beasts<br>going at large without keeper.<br>Beasts going at large on Lord's<br>day, &c. | 11. Beasts not to be delivered until<br>costs, &c., are paid.                       |
| 5. Beasts taken up to be impounded.   | 12. Notice to be given to owner or<br>keeper.                                       |
| 6. Fees to field driver and pound<br>keeper.  | 3. Notice to be given or posted up<br>and published in a newspaper, in<br>case, &c. |
| 7. Fee to be paid by owners of beasts.  |   |

14, 15. Sum due from owner, how determined.	19. Penalty for rescuing beasts distrained.
16. If not paid, beasts to be sold.	20. Legality of distress to be tried only by replevin.
17. Proceeds, how disposed of.	21. Rams and he goats, when not to go at large.
18. Beasts escaped or rescued, may be retaken.	

## STATUTES.

1. Each city and town shall, at its own expense, and in such places therein as the city council of the city or the inhabitants of the town direct, maintain one or more sufficient pounds. A city or town that for three months neglects to provide or maintain a sufficient pound, shall forfeit fifty dollars.

Pounds to be provided by towns.  
Penalty for neglect.  
G. S. 25, § 18.

2. Whoever wilfully injures a city or town pound, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the common jail not exceeding ninety days.

Penalty for injuring pounds.  
Ibid. § 19.

3. Each city or town shall annually appoint a suitable keeper of each pound therein.

Pound keepers.  
Ibid. § 20.

4. Every field driver within his city or town shall take up at any time, swine, sheep, horses, asses, mules, goats, or neat cattle, going at large in the public highways or townways or on common and unimproved lands, and not under the care of a keeper; and for any such cattle or beasts so going at large on the Lord's day, the field driver or any other inhabitant of the city or town may in action of tort recover for each beast the same fees which the field driver is entitled to receive for like beasts when distrained and impounded.

Beasts going at large without keeper to be taken up, &c.  
Ibid. § 21.  
21 Pick. 187.  
23 Pick. 251.  
12 Met. 198.  
2 Gray, 180.  
4 Gray, 314, 345.

5. When beasts are so taken up and distrained by a field driver, they shall be forthwith impounded in the city or town pound, and the keeper shall furnish them with suitable food and water while they are detained in his custody.

Beasts to be impounded.  
G. S. 25, § 22.  
5 Cush. 263.  
4 Gray, 312.

6. The field driver shall be entitled to fifty cents per head for horses, asses, mules, and neat cattle, and ten cents per head for sheep and goats, and fifty cents for swine so taken up by him, and the pound keeper shall be entitled to four cents per head for the animals so impounded; but if more than ten sheep are taken up at the same time, the fees for all above that number shall be only one half of the above fees.

Fees of field driver and pound keeper.  
G. S. 25, § 23.

Fees to be paid  
by owner of  
beasts.  
Ibid. § 24.  
21 Pick. 181.

7. The pound keeper shall not deliver to the owner any beast so impounded until the owner pays him his fees, the expense of keeping the beasts, and the fees of the field driver, which latter, when received, he shall pay to the field driver.

Beasts doing  
damage, may  
be distrained.  
G. S. 25, § 25.  
5 Greenl. 356.  
6 Mass. 90.  
16 Mass. 37.  
3 Met. 589.  
14 Met. 407.

8. When a person is injured in his land by sheep, swine, horses, asses, mules, goats, or neat cattle, he may recover his damages in an action of tort against the owner of the beasts, or by distraining the beasts doing the damage, and proceeding therewith as hereinafter directed ; but if the beasts were lawfully on the adjoining lands and escape therefrom in consequence of the neglect of the person who suffered the damage to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage.

Beasts to be  
impounded.  
G. S. 25, § 26.  
13 Met. 407.

9. The beasts so distrained for doing damage shall be impounded in the city or town pound, or in some suitable place, under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water while they remain impounded.

Person dis-  
training to state  
demand.  
G. S. 25, § 27.  
21 Pick. 187.  
23 Pick. 251.  
12 Met. 198.  
13 Met. 407.

10. If the beasts are impounded in the city or town pound, the distrainer shall leave with the pound keeper a memorandum in writing under his hand, stating the cause of impounding, and the sum that he demands from the owner for the damage done by the beasts, and also for the daily charges of feeding them ; and if they are impounded in any other place, he shall give a like memorandum to the owner of the beasts if demanded by him.

Beasts not to  
be delivered  
until costs, &c.,  
are paid.  
G. S. 25, § 28.

11. The pound keeper, when the beasts are in his custody, shall not deliver them to the owner until the owner pays him his fees, the sum so demanded by the distrainer for the damages and charges aforesaid, the expense of advertising the beasts if they are advertised, and all other legal costs and expenses.

Notice to be  
given to owner  
or keeper.  
G. S. 25, § 29.  
21 Pick. 187.  
23 Pick. 251.  
12 Met. 118, 198.  
7 Cush. 355.  
2 Gray, 178.

12. When beasts are impounded, the person impounding them shall, within twenty-four hours thereafter, give notice thereof in writing to the owner or person having the care of them, if known and living within six miles from the place of impounding, which notice shall be delivered to the party or left at his place of abode, and shall contain a description of the beasts and a statement of the time, place, and cause of impounding.

13. If there is no person entitled to notice according to the provisions of the preceding section, the person impounding the beasts shall, within forty-eight hours thereafter, cause to be posted in some public place in the city or town, and in a public place in each of any two adjoining cities or towns, if within four miles from the place where they were taken, a written notice containing a description of the beasts and a statement of the time, place, and cause of impounding them ; and in such case, if the value of the beast exceeds thirty dollars, and if no person appears to claim them within seven days after the day of impounding, a like notice shall be published three weeks successively in some public newspaper, if there is any published within twenty miles from the place of impounding, the first publication to be within fifteen days after the day of impounding.

Notices to be given or posted up, and published in a newspaper, in case, &c.  
G. S. 25, § 30.

14. If the owner or keeper of the beasts is dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable ascertained and determined by two disinterested and discreet persons, to be appointed and sworn for that purpose by a justice of the peace or by the city or town clerk ; and the sum so determined by them shall be received instead of the sum demanded by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof.

Sum due from owner, how determined.  
Ibid. § 31.

15. If the sum for which the beasts are impounded and detained is not paid within fourteen days after notice of the impounding has been given as before directed, or after the last publication of such notice in a newspaper, the person who impounded them shall apply to a justice of the peace, or to the city or town clerk, and obtain a warrant to two disinterested and discreet persons, to be appointed and sworn by the justice or clerk, and the persons so appointed shall ascertain and determine the sum due from the owner or keeper of the beasts for the damages, costs, and expenses for which they are impounded and detained, including a reasonable compensation for their own services.

Same subject.  
Ibid, § 32.  
21 Pick. 55.

16. If the sum so found to be due is not forthwith paid, the person who impounded the beasts shall cause them to be sold by auction, in the city or town where they are impounded, first

If not paid, beasts to be sold.  
G. S. 25, § 33.

G. S. 25, § 33. 21 Pick. 55.      advertising the sale by posting up a notice thereof twenty-four hours beforehand at some public place in the same city or town.

Proceeds, how disposed of. Ibid. § 34.      17. The proceeds of such sale, after paying all said damages, costs, expenses, and charges for advertising and selling the beasts, shall be deposited in the treasury of the city or town for the use of the owner of the beasts, in case he substantiates his claim thereto within two years from the sale.

Beasts escaped or rescued may be retaken. Ibid. § 35.      18. If beasts lawfully distrained or impounded escape or are rescued, the pound keeper, field driver, or other person who distrained them, may, at any time within seven days thereafter, retake the beasts and hold and dispose thereof as if no such escape or rescue had taken place.

Penalty for rescuing beasts distrained. Ibid. § 36. 1 Mass. 168. 17 Mass. 342. 4 Mass. 471. 5 Cush. 267.      19. Whoever rescues beasts lawfully distrained or impounded, for any cause whatever, shall be liable in an action of tort brought by any person injured to pay all damages which such person sustains thereby, and the fees and charges incurred before the rescue ; and he shall also forfeit a sum not less than five nor more than twenty dollars, to be recovered by complaint.

Legality of distress, how tried. G. S. 25, § 37. 4 Mass. 471. 5 Pick. 514. See G. S. c. 146.      20. The defendant, in an action brought for rescuing beasts distrained or impounded, shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance to show that the distress or impounding was illegal ; but if there is such ground of objection to the proceeding of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin.

Rams and he goats, when not to go at large. G. S. 25, § 38.      21. If the owner of a ram or he goat suffers it to go at large out of his enclosure, between the first day of July and the twenty-fifth day of December, he shall forfeit five dollars for each offence, if prosecuted within thirty days next after such ram or he goat is found going at large, to be recovered on complaint in the county in which such owner lives.

## FINANCE.

## STATUTE.

Interest authorized upon accounts current of cities and towns with banks.

## ORDINANCE.

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Joint committee of accounts. How appointed.</li> <li>2. Auditor of accounts. His appointment. Oath. Bond.</li> <li>3. No moneys to be paid from city treasury, unless vouched, &amp;c., and drawn for by mayor. Proviso.</li> <li>4. Committee of accounts to direct the manner of keeping the auditor's books, &amp;c., and to pass bills.</li> <li>5. Auditor. His duty as to keeping books, and making communications to city council, examining and casting bills, &amp;c. To render other services when required.</li> <li>6. City treasurer, when to make up his accounts. Commencement of the financial year.</li> </ol> | <ol style="list-style-type: none"> <li>7. Joint committee of finance. Their appointment and duty.</li> <li>8. Committee on the reduction of the city debt.</li> <li>9. City debt, what moneys to be applied annually to the reduction of.</li> <li>10. Auditor to pass such moneys to the credit of the committee, &amp;c.</li> <li>11. Committee authorized to lend to treasurer sums not immediately wanted.</li> <li>12. Debts due the city to be put into hands of city solicitor for suit.</li> <li>13. City officers to pay over moneys to the treasurer.</li> <li>14. To lay statement before city council.</li> <li>15. Auditor to lay before city council a schedule of leases. Estimates of money to be raised. Statement of receipts and expenditures. Account with the treasurer.</li> <li>16. Joint committee to audit treasurer's account.</li> </ol> |
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## STATUTE.

The General Statutes, chapter fifty-seven section, sixty-three, provide that banks may contract with cities and towns in this commonwealth for the payment or receipt of interest, at a rate not exceeding that established by law, upon an account current of money deposited with and drawn from them by said cities and towns.

Interest authorized upon accounts current of cities and towns with banks.  
G. S. 57, § 63.

ORDINANCE.<sup>1</sup>

Joint committee of accounts.  
How appointed.  
Dec. 22, 1825.  
Jan. 12, 1855.

SECTION 1. There shall be appointed in the month of January, annually, by ballot in each board of the city council, a joint committee of accounts, to consist of three on the part of the board of aldermen, and five on the part of the common council, whose duty it shall be to meet once a month, and as much oftener as they may deem expedient.

Auditor of accounts.  
His appointment.  
Dec. 22, 1855.

SECT. 2. There shall be appointed in the month of May, annually, by concurrent ballot in each board, one able and discreet person, to be styled auditor of accounts; who shall continue in office until removed, or a successor be appointed; who shall receive such compensation for his services as the city council shall authorize and establish, and who shall be removable at all times at the pleasure of the city council; who shall be sworn to the faithful discharge of the duties of his office, and give bond with surety or sureties, to be approved by the board of aldermen in the penal sum of five thousand dollars, for the faithful discharge of said duties, the true accounting for and payment over of all moneys which shall come into his hands, and the delivery over to his successor or to the city clerk of all the books, accounts, papers, and other documents and property which shall belong to said office; and in case said office should become vacant by death, resignation, or otherwise, a successor shall forthwith, and in like manner, be appointed and qualified, who shall continue in office until the appointment and qualification of a successor.

Oath.  
Bond.

No moneys to be paid from city treasury, unless vouched, &c., and drawn for by mayor.

SECT. 3. No moneys shall be paid out of the city treasury, except in the cases hereinafter provided, unless the expenditures, or the terms of the contract, shall be vouched by the chairman

<sup>1</sup> An ordinance establishing a system of accountability in the expenditure of the city, passed December 22, 1825. An ordinance concerning the public loans and reduction of the city debt, passed March 10, 1834. An ordinance providing for the more regular collection of debts due to the city of Boston, passed February 23, 1835. An ordinance further to provide for a system of accountability in the concerns of the city, passed July 27, 1835. An ordinance in addition, &c., passed December 28, 1840. An ordinance in relation to finance, passed December 28, 1854. An ordinance in addition to an ordinance on finance, passed January 12, 1855.

of the committee of the board under whose authority it has been Dec. 22, 1825. authorized and made; nor unless the same shall be examined by the auditor, approved by the committee of accounts, and drawn for by the mayor. And it shall be the duty of the mayor to compare such expenditures with the general appropriations made for the various objects, and require the auditor to make an exhibit of the state of such appropriations, monthly, to the city council; *provided*, that in all cases where it is necessary for Proviso. money to be paid in advance, for contracts made or for work begun but not completed, the mayor may, upon being satisfied of such necessity, draw upon the city treasurer for the amount thus necessary to be advanced; which draft shall be paid by the city treasurer, provided the same be countersigned by the auditor; and it shall be the duty of the auditor to countersign all such drafts, not exceeding three hundred dollars, and to charge the same to the proper person, and account; but the said auditor shall not countersign any such draft for any sum exceeding three hundred dollars without the direction of the committee of accounts.

SECT. 4. It shall be the duty of the committee of accounts Committee of accounts to direct the manner of keeping the auditor's books, &c., and to pass bills. Ibid. to direct the auditor as to the manner in which the books, records, and papers belonging to his department shall be kept, and the mode in which all bills and accounts against the city shall be certified or vouched; and, at least once in every month, to examine, and if they see fit, to pass all bills and accounts against the city which shall be certified by the auditor.

SECT. 5. It shall be the duty of the auditor to keep in a neat, Auditor. His duty as to keeping books, and making communications to city council. Ibid. methodical style and manner, a complete set of books, under the direction of the committee of accounts; wherein shall be stated among other things, the appropriation for each distinct object of expenditure, to the end that whenever the appropriations for the specific objects shall have been expended he shall immediately communicate the same to the city council, that they may be apprised of the fact, and either make a further appropriation or See p. 126. withhold further expenditure for such object or objects, as they may deem expedient. The auditor shall also receive all bills and Receiving, examining, and casting bills, &c. accounts from persons having demands against the city, examine them in detail, cast up the same, and have them filed and

Jan. 12, 1855.  
Dec. 22, 1825.

entered in books, in such manner and form as the committee of accounts shall order and direct. And when the auditor shall have any doubt concerning the correctness of any such bill or account presented against the city, he shall not enter the same in a book until he shall have exhibited the same, with his objections, to the committee of accounts at their next meeting, for their consideration and final decision. And it shall also be the duty of the auditor to render any other services, from time to time, as the city council or the committee of accounts shall direct.

To render other  
services, when  
required.

City treasurer,  
when to make  
up his accounts.  
Commence-  
ment of the  
financial year.  
Ibid.

Joint commit-  
tee of finance.  
Their appoint-  
ment and duty.  
March 10, 1834.

SECT. 6. The city treasurer shall make up his annual accounts to the thirtieth of April; and the financial year shall begin on the first day of May, and end on the thirtieth day of April in each year.

SECT. 7. There shall be annually appointed a committee of finance, to consist of the mayor, the chairman of the board of aldermen, and seven members of the common council to be chosen by that board; whose duty it shall be, under the direction of the city council, to negotiate all loans made on account of the city, whether on behalf of the committee on the reduction of the city debt, hereinafter mentioned, or for any other purpose, and to consider and report on all subjects relating to the finances of the city.

Committee on  
the reduction of  
the city debt.  
Ibid.

SECT. 8. The mayor, the president of the common council, and the chairman of the joint committee of finance on the part of the common council, shall be a committee, to be called the committee on the reduction of the city debt, whose duty it shall be to cause all moneys passed to their credit in the books of the auditor of accounts to be applied to the purchase or payment of the capital of the debt of the city, in the manner they may from time to time deem expedient, and it shall be the duty of the auditor and of the treasurer of the city to conform to all orders in writing, in this respect, which shall be made and signed by all the members of said committee.

City debt.  
What moneys  
to be applied  
annually to the  
reduction there-  
of.  
Ibid.

SECT. 9. All balances of money remaining in the treasury at the end of any financial year; all receipts in money on account of the sale of real estate of any description now belonging, or which may hereafter belong to the city; all receipts on account of the principal sum of any bond or note now owned, or

which may hereafter be owned by the city; and also of the annual city tax, in every future year, a sum that shall not be less than three per centum of the amount of the principal of the city debt, and not less than fifty thousand dollars in each year, shall be and the same hereby are appropriated to the payment or the purchase of the capital of the city debt. Dec. 28, 1840.

SECT. 10. It shall be the duty of the auditor, annually, to pass to the credit of the committee on the reduction of the city debt all receipts in money, the proceeds of either of the sources before mentioned, and the said amount out of the annual tax, and the sums so passed to the credit of said committee shall be drawn from the treasury of the city for the payment of the purchase of the capital of the city debt, in the manner before mentioned, and in no other mode and for no other purpose whatsoever. Auditor to pass such moneys to the credit of the committee, &c. March 10, 1834.

SECT. 11. The committee on the reduction of the city debt are hereby authorized to lend on interest to the treasurer of the city any amount so passed to their credit as aforesaid, which may not be immediately wanted for the purchase or redemption of said debt. Committee authorized to lend to treasurer, sums not immediately wanted. Ibid.

SECT. 12. In all cases where specific provision is not now made, either by the laws of the commonwealth or by the ordinances of the city for the collection of debts due to the city, whether for the principal or interest of any note or bond, or arising from any assessment, contract, or account, or in any other manner whatsoever, if the party owing such debt shall not, within sixty days after demand made, pay the same, such claim of the city shall be placed by the treasurer or the auditor of accounts, as the case may be, in the hands of the city solicitor, who shall forthwith put the same in suit; *provided, however*, that where, in the judgment of the mayor, the interests of the city require, he may direct any debt due to the city to be put in suit at any time after the same may become due. Debts due the city to be put in hands of city solicitor for suit. Feb. 23, 1835.

SECT. 13. It shall be the duty of the city clerk, the auditor of accounts, the chief of police, the weighers of hay, and the city registrar, respectively, to pay over to the city treasurer as often at least as once in three months, all moneys which they shall receive belonging to the city, and all other officers authorized to City officers to pay over moneys to the treasurer. July 27, 1835.

July 27, 1835. collect such moneys shall pay the same over to the said treasurer as soon as they may be collected.

City officers to lay statement of moneys received before city council. Ibid.

SECT. 14. It shall be the duty of the city clerk, the auditor of accounts, the chief of police, the weighers of hay, the city registrar and the superintendent of Faneuil Hall Market, respectively, as early as may be in the months of February, May, August, and November, in every year, to lay before the city council a statement of the whole amount of moneys which shall have been received at their respective offices during the three preceding months; specifying in detail the sums received from each source of income. They shall also report the amounts, if any, which remain due to the city and unpaid, and generally, any other information which they may possess in relation to the said statement.

Auditor to lay before city council a schedule of leases. Ibid.

SECT. 15. It shall be the duty of the auditor of accounts to lay before the city council annually, in the month of May, a schedule of all the leases of the city property, specifying severally the names of the lessees, the rates of rent, and the periods when the leases will terminate. He shall also, in the month of February annually, lay before said council an estimate of the amount of money necessary to be raised for the ensuing year under the respective heads of appropriation, and shall, on or before the first day of July annually, make and lay before said council a statement of all the receipts and expenditures of the past financial year, giving in detail the amount of appropriation and expenditure for each specific object, the receipt from each source of income, and the operations of the committee on the reduction of the city debt; the whole to be arranged, as far as practicable, to conform to the accounts of the city and county treasurer, so that their coincidence may be apparent; and said statement shall be accompanied by a schedule of the property belonging to the city, and also by an exhibit showing the debts due by the city, the rates of interest thereon, and the years in which the same will become due. The auditor shall also open an account with the treasurer of the city, wherein said treasurer shall be charged with the whole amount of taxes placed in his hands for collection, also the whole amount, in detail, of all bonds, notes, mortgages,

Estimates of money to be raised.

Statement of receipts and expenditures.

Account with the treasurer.

leases, rents, interest, and other sums receivable, in order that July 27, 1835. the value and description of all personal property belonging to the city may be at any time known at the office of the auditor.

SECT. 16. There shall be annually appointed in the month of May a joint committee, to consist of two on the part of the board of aldermen and three on the part of the common council, whose duty it shall be to examine, audit, and settle the accounts of the city and county treasurer for the preceding financial year; and said committee shall not only compare said accounts, with the vouchers thereof, but shall ascertain whether all sums due to the city have been collected and accounted for; they shall also examine the notes, bonds, and other securities belonging to the city, and make a full and particular report of their proceedings to the city council.

Joint committee to audit treasurer's accounts, &c. Ibid.

## FIRE.

## STATUTES.

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| <ol style="list-style-type: none"> <li>1. City council may establish a fire department. May make provisions respecting the same. Appointment of enginemen, &amp;c., to be made by mayor and aldermen.</li> <li>2. Powers, &amp;c., of city council may be exercised by means of any board, &amp;c.</li> <li>3. Engineers, &amp;c., to have the powers and duties of firewards. To examine places where shavings, &amp;c., are collected, &amp;c. Ordinances may be made, &amp;c.</li> <li>4. Exemptions of members of fire department.</li> <li>5. City council may appropriate money for relief of members injured, &amp;c.</li> <li>6. Disabled firemen, city of Boston authorized to expend annually \$ 1,000 for relief of.</li> </ol> | <ol style="list-style-type: none"> <li>7. Engineers shall attend at fires.</li> <li>8. Engineers, &amp;c., may order buildings to be pulled down, &amp;c.</li> <li>9. Engineers, &amp;c., may command assistance.</li> <li>10. Engineers may give orders to enginemen and others, &amp;c. Penalty for not obeying.</li> <li>11. Owners of buildings, &amp;c., pulled down, to be indemnified, except, &amp;c.</li> <li>12. Embezzling, &amp;c., of property, at a fire, to be deemed larceny.</li> <li>13. Injuring fire engines, penalty for.</li> <li>14. Engineers may require and compel assistance. Penalty for disobeying.</li> <li>15. Bonfires not to be made. Penalty for making.</li> <li>16. False alarms of fire, how punished.</li> <li>17. Cocoa not to be roasted except in licensed buildings. Penalty.</li> </ol> |
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18. Tar kettles and other boilers, how to be constructed. Penalty.
  19. Penalty for carrying fire through the streets, &c., smoking pipes, cigars, &c.
  20. Penalty for having lighted pipe, cigar, candle, &c., in any rope-walk, barn, &c.
  21. Recovery of penalties. Duty of engineers to prosecute.
  22. Gun-cotton, and other like substances, power to regulate the keeping of.
  23. Camphene, city council, &c., may make rules in relation to storage and sale of.
  24. Fireworks not to be kept without license.
  25. Penalty.
  26. Fire clubs not to be established, unless, &c.
  27. Penalty for joining without permission.
  28. Provisions of two preceding sections to be in force only where, &c.
  29. Cutting, &c., bell rope, engine, &c., preceding a fire, how punished.
  30. Cutting, &c., same at a fire, how punished.
  31. Stealing property in a building on fire, or removed therefrom, how punished.
5. Secretary of board shall keep account of appropriations and expenditures, &c.
  6. Engineers, powers and duties at fires.  
Assistant engineers to report their absence from fires.
  7. In case of fires in adjoining towns.
  8. Chief engineer to have sole command; his powers and duties.
  9. If absent, engineer next in rank shall execute his duties.
  10. Engineers shall report to the aldermen names of persons who do not obey orders at fires.
  11. Three engineers may order buildings to be demolished.
  12. Engineers shall examine places for combustible materials, and cause them to be removed. Penalties for not removing or of obstructing the removal. Engineers shall examine buildings containing steam engines, and buildings being erected or altered. Shall prosecute for all infractions of any laws or ordinance.
  13. Gunpowder, all powers relating to the keeping and transportation of shall be exercised by the engineers.
  14. Fines and penalties shall be paid into city treasury, except, &c.
  15. Members of the fire department shall be twenty-one, citizens and voters.
  16. All members shall sign agreement to obey all ordinances and rules and regulations.
  17. Engineers to report to mayor names of persons who ought to be removed, and recommend persons to fill vacancies.
  18. Members may be removed by the mayor, excepting engineers,

## ORDINANCE.

1. Fire department shall consist of engineers, enginemen, hosemen, hook and ladder men, and others.
2. Chief and other engineers to be chosen annually; tenure of office, vacancy, and compensation.
3. Organization of board; rank of engineers; election of secretary; his tenure of office; compensation; to be sworn and give bond.
4. Meetings of the board; may make rules and regulations for the board and for the department;

- superintendent of the fire alarms and his assistants.
19. Names of persons removed and the cause to be entered on records of engineers, and copy sent to board of aldermen.
  20. Compensation of members. When absent may procure a substitute.
  21. Members shall not assemble in engine houses, except, &c.
  22. Members who neglect their duties, or are disorderly, to be dismissed.
  23. Members serving seven years, may have a certificate, may wear the badge, and perform duty.
  24. Different companies to be formed by the board of aldermen.
  25. Members to be paid quarterly, except, &c.
  26. Engine companies to have foreman, engineman, fireman, driver, and eight hosemen. Their duties.
  27. Hose companies to have foreman, driver, and eight hosemen. Their duties.
  28. Hook and ladder companies to have three or more each of axemen and rakemen.
  29. Engineers to make regulations respecting driver and steward of hook and ladder companies.
  30. Engine, hose, and hook and ladder companies each to have foreman and clerk, and last company an assistant foreman. How to be appointed.
  31. Engineman, his duties and responsibilities.
  32. Foreman of engine, his duties and powers.
  33. In absence of foreman of any company, assistant foreman, &c., to perform his duties.
  34. Fireman to be under the immediate direction of the engineman.
  35. Drivers, their duties.
  36. Clerks to keep rolls, records of absences, property in care of company, and make reports.
  37. Hosemen, axemen, rakemen, their duties.
  38. Engineers may permit a member to sleep in hose house, &c.
  39. Duties of all members of the fire department in case of fire.
  40. When appointed, subject to all duties, rules, and regulations. Vacancies to be filled.
  41. All members of the fire department to wear badges.
  42. No uniform, except badges and insignia prescribed, to be worn.
  43. No company shall appoint or discharge members.
  44. No company shall attend fires out of city, unless ordered by engineers. Nor go out of the city for any other purpose.
  45. Clubs, &c., prohibited, except, &c.
  46. Fines shall not be imposed by companies. Deductions from pay for absence. Absence, &c., cause for discharge.
  47. Vacations may be granted. Substitute may be appointed.
  48. Police to give alarm, how. Penalty for not doing it.
  49. Police, selected for the purpose, shall repair to fires. Their duties.
  50. Fire-alarm telegraph, committee of to be appointed.
  51. They shall have care of the rooms, apparatus, &c., of fire-alarm telegraph. Their powers and duties.
  52. Superintendent of fire-alarm telegraph to be elected; tenure of office; compensation.
  53. His duties.
  54. Rules and regulations of fire-alarm telegraph.
  55. May be altered by committee, &c.

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| 56. Signal boxes not to be opened or injured.<br>57. Penalty for breach of ordinance. | 58. Present members shall continue in office. Conditions.<br>59. Repeal of previous ordinances. |
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## STATUTES.

City council may establish a fire department, 1850, 262, § 1.  
 [Adopted by the city council, June 4, 1850.]  
 May make provisions respecting the same.

1. The city council of the city of Boston may establish a fire department for said city, to consist of so many engineers and other officers, and so many enginemen and other members, as the city council, by ordinance, shall from time to time prescribe; and said city council shall have authority to make such provisions in regard to the time and mode of appointment, and the occasion and mode of removal of either such officers or members, to make such requisitions in respect to their qualifications and period of service, to define their office and duties, to fix and pay such compensation for their services, and, in general, to make such regulations in regard to their conduct and government, and to the management and conduct of fires, and persons attending at fires, subject to the penalties provided for the breach of the city by-laws, as they shall deem expedient; *provided*, that the appointment of enginemen, hosemen, and hook and ladder men shall be made by the mayor and aldermen exclusively.

Appointment of enginemen, &c., to be made by mayor and aldermen, 1850, 262 § 1.

Powers, &c., of city council may be exercised by means of any board, &c. Ibid. § 2.

2. The powers and duties mentioned in the preceding section, or any of them, may be exercised and carried into effect by the said city council, in any manner which they may prescribe, and through the agency of any persons, or any board or boards to whom they may delegate the same.

Engineers, &c., to have the power and duties of firewards. Ibid. § 3.

3. The engineers or other officers of the department, so appointed as aforesaid, shall have the same authority, in regard to the prevention and extinguishment of fires, and the performance of the other offices and duties now incumbent upon firewards, as are now conferred upon firewards by the revised statutes, or the special acts relating to the city of Boston now in force. They shall also have authority, in compliance with any ordinance of said city, to make an examination of places where shavings and other combustible materials are collected or deposited, and to require the removal of such materials, or the adoption of suitable safeguards against fire. And said city council are hereby author-

To examine places where shavings, &c., are collected, &c. Ibid.

Ordinances

ized to make suitable ordinances upon this latter subject-matter, under the penalties enacted in the city charter.

may be made,  
&c.  
1850, 262, § 3.

4. All officers and members of the fire department shall be exempted from military duty, or from serving as jurors, or constables, during the time of their employment in said department.

Exemptions of  
members.  
Ibid. § 4.  
G. S. 13, § 11.  
132, § 2.

5. The city council aforesaid are hereby authorized, whenever, and as often as they shall deem it expedient, to appropriate any sum or sums of money, in the way that may be judged by said city council most advisable, for the relief or indemnity of any officer or member of the fire department, who may sustain corporal injury, or contract sickness in the discharge of his duty, or consequent thereon.<sup>1</sup>

City council  
may appropriate  
money for  
relief of mem-  
bers injured,  
&c.  
1850, 262, § 5.  
1854, 375.

6. By an act passed April 27, 1854, and accepted by the city council February 3, 1855, the city of Boston was thereby authorized to expend a sum not exceeding one thousand dollars annually, under the direction of the city council, for the relief of such firemen as shall have been disabled in the service of the said city, and for the relief of the families of such firemen as have been killed in the performance of their duties.

City of Boston  
authorized to  
expend annu-  
ally \$ 1,000 for  
relief of disa-  
bled firemen.  
1854, 375.

7. When a fire breaks out the engineers shall immediately repair thereto, and shall carry a suitable staff or badge of their office.

Engineers shall  
attend fires.  
G. S. 24, § 3.  
1850, 262, § 3.

8. The engineers, or any three of them present at a place in immediate danger from fire, or in their absence two or more of the civil officers present, or in their absence two or more of the chief military officers of the place present, shall have power to direct the pulling down or demolishing of any such house or building as they shall judge necessary to be pulled down or demolished, in order to prevent the further spreading of the fire.

Engineers, &c.,  
may order  
buildings to be  
pulled down,  
&c.  
G. S. 24, § 4.  
1850, 262, § 3.

9. Engineers or other officers may, during the continuance of a fire, require assistance for extinguishing the same, and removing furniture, goods, or merchandise from a building on fire or in danger thereof; and may appoint guards to secure the same. They may also require assistance for pulling down or

Engineers, &c.,  
may command  
assistance.  
G. S. 24, § 6.  
1850, 262, § 3.

<sup>1</sup> The stat. of 1850, c. 262, repealed stat. 1822, c. 52; 1819, c. 104; 1825, c. 52; 1826, c. 97; 1828, c. 123; and 1831, c. 52.

1850, 262, § 3.

demolishing any house or building when they judge it necessary ; and may suppress all tumults and disorders at such fire.

Engineers may give orders to enginemen and others, &c.  
G. S. 24, § 7.  
1850, 262, § 3.

10. They may direct the stations and operations of the enginemen with their engines, and of all other persons for the purpose of extinguishing the fire ; and whoever refuses or neglects to obey such orders shall forfeit for each offence a sum not exceeding ten dollars.

Owners to be indemnified, except, &c.  
Ibid. 24, § 5.  
1850, 262, § 3.  
8 Met. 462.  
5 Cush. 269.  
11 Cush. 433.

11. If such pulling down or demolishing of a house or building is the means of stopping the fire, or if the fire stops before it comes to the same, the owner shall be entitled to recover a reasonable compensation from the city or town ; but when such building is that in which the fire first broke out, the owner shall receive no compensation.

Embezzling, &c., of property, at a fire, to be deemed larceny.  
G. S. 24, § 8.

12. Whoever purloins, embezzles, conveys away, or conceals, any furniture, goods, or chattels, merchandise or effects of persons whose houses or buildings are on fire or endangered thereby, and does not within two days restore or give notice thereof to the owner if known, or if unknown, to one of the firewards, mayor and aldermen, or selectmen, of the place, shall be deemed guilty of larceny.

Penalty for injuring fire engines.  
Ibid. § 22.

13. Whoever wantonly or maliciously injures a fire engine or the apparatus belonging thereto, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, and be further ordered to recognize with sufficient surety or sureties for his good behavior during such term as the court shall order.

Engineers may require and compel assistance.  
1817, 171, § 13.  
1850, 262, § 3.

14. It shall be lawful for any one or more of the engineers aforesaid to require and compel the assistance of all or any of the inhabitants of the city ; and any other persons who shall be present as spectators of any fire ; and in any suit or prosecution therefor, it shall be lawful for them to plead the general issue, and give the statute in evidence ; and if any persons shall disobey the lawful and reasonable command of any engineer or engineers, to aid in extinguishing such fire, or in rescuing property from destruction thereby, such person, so offending, shall be liable to a fine not exceeding twenty dollars, to be recovered in the manner provided in the twenty-first section.

See 1852, 312, § 12.  
Penalty for disobeying.

See § 21, *post*.

15. Whoever is concerned in causing or making a bonfire within ten rods of any house or building, shall be punished, by fine not exceeding twenty dollars, or by imprisonment not exceeding one month.

Bonfires, penalty for making.  
G. S. 164, § 12.

16. Whoever, without reasonable cause, by outcry or the ringing of bells, or otherwise, makes or circulates, or causes to be made or circulated any false alarm of fire, shall be punished by fine not exceeding fifty dollars.

False alarms of fire, how punished.  
Ibid. § 13.

17. If any person or persons shall, within the city of Boston, roast, or cause to be roasted, any cocoa, for the purpose of manufacturing the same into chocolate, in any building whatever, excepting such as may or shall be licensed for that purpose by the major part of the engineers of the city aforesaid, he, she, or they shall forfeit and pay for every such offence a sum not exceeding five hundred dollars nor less than two hundred dollars.

Cocoa not to be roasted except in licensed buildings.  
Penalty.  
1817, 171, § 6.  
1850, 262, § 3.

18. Every tar kettle which shall be made use of in the city for the purpose of boiling tar for the use of any rope-walk, and every kettle, boiler, or copper for the use of any caulker, graver, ship carpenter, tallow chandler, soap boiler, painter, or other like artificer, shall be so fixed as to prevent all communication whatsoever between the contents of such kettle, boiler, or copper, and the fire. And the fireplace under every such tar or other kettle, boiler, or copper shall be constructed with an arch built over the same, and secured by an iron door in such manner as to enclose the fire therein; and every person who shall erect any tar kettle or other kettle, boiler, or copper, or use the same for any or either of the purposes aforesaid, contrary to the provisions of this act, shall for every such offence forfeit and pay a sum not exceeding three hundred dollars nor less than fifty dollars, according to the degree and aggravation of the same.

Tar kettles and other boilers, how to be constructed.  
1817, 171, § 9.

19. Every person who shall carry any fire through the streets, lanes, or on any wharves in the city, except in some covered vessel, or who shall kindle a fire in any of the places aforesaid without the permission therefor in writing of one or more of the engineers aforesaid, or shall smoke or have in his or her possession any lighted pipe or cigar in any street, lane,

Penalty.

Penalty for carrying fire through the streets, &c., smoking pipes, cigars, &c.  
1817, 171, § 10.  
1850, 262, § 3.

1850, 262, § 5.

or passageway, or on any wharf in said city, shall forfeit and pay for each and every offence the sum of two dollars, to be recovered of the person so offending, or of his parent, guardian, master, or mistress.

Penalty for having lighted pipe, cigar, candle, &c., in any rope-walk, barn, &c.  
1817, 171, § 11.  
12 Met. 231.

20. If any person shall have in his or her possession in any rope-walk, or in any barn or stable within the city, any fire, lighted pipe, or cigar, lighted candle or lamp, except such candle or lamp is kept in a secure lantern, the person so offending shall forfeit and pay for each offence a sum not exceeding one hundred dollars nor less than twenty dollars.

Recovery of penalties.  
1817, 171, § 12.

21. All and any of the penalties which are given in and by the fourteenth, and the four preceding sections, may be recovered by indictment, information, or complaint in any court proper to try the same; and in such indictment, information, or complaint it shall not be necessary to set forth any more of said sections than so much thereof as relates to and is necessary truly and substantially to describe the offence alleged to have been committed. And it shall be the duty of each and every one of said engineers, and they and each of them are hereby required to inquire after all offences which shall come to their knowledge, and which shall be committed against the true intent and meaning of said sections, and shall cause the same to be duly prosecuted.

G. S. 171, § 16.  
3 Pick. 462.

Duty of engineers to prosecute.  
G. S. 164, § 12.  
1850, 262, § 3.

Gun-cotton, and other like substances, power to regulate the keeping of.  
G. S. 88, § 48.  
1847, 51.

22. By an act passed March 6, 1847, and re-enacted in the General Statutes, the inhabitants of any town and the government of any city in this commonwealth may order that no gun-cotton, or other substance prepared like it for explosion, shall be kept within the limits of such town or city, excepting under the regulations and penalties applicable by law to gunpowder; and if it shall be considered necessary for public safety, they may restrict the quantity to be so kept to one fifth of the weight of gunpowder allowed by law in each case provided for.

Camphene, city council, &c., may make rules in relation to storage and sale of.  
G. S. 88, § 51.

23. The inhabitants of any town and the city council of any city in this commonwealth may make and adopt such rules and regulations in relation to the storage and sale, within the limits of such town or city, of camphene, or any similar explosive or inflammable fluid, as they may deem reasonable, and may annex

penalties to any breach of such rules and regulations not exceeding twenty dollars for any one offence.<sup>1</sup> G. S. 88, § 51

24. It shall not be lawful for any person or persons to keep or sell any fireworks within the city of Boston, in any quantity, without first having obtained from the chief engineer of the fire department of said city a license therefor, signed by the chief engineer or by the secretary of the board of engineers, on which shall be written or printed a copy of the rules and regulations<sup>2</sup> by them established relative to the keeping, selling, or storage of fireworks within said city; and every such license shall be in force until the first day of May next ensuing the date thereof, unless sooner annulled by the board of engineers, and no longer; but such license may, prior to the expiration of that term, be renewed by the chief engineer or the said secretary, from year to year, by indorsement thereon; *provided, always*, that the board of engineers may rescind any such license, if in their opinion the person or persons have disobeyed the law or infringed on any rules or regulations established by the board of engineers; and every person who receives a license to sell fireworks as aforesaid shall pay for the same the sum of one dollar, and the same sum for the renewal thereof, and all such licenses shall expire on the first day of May annually, and all moneys received for licenses shall be paid to the board of engineers, for the purpose of defraying the expenses of carrying this act into execution. Not lawful to keep fireworks without license, 1853, 154, § 1.

25. Any person or persons who have for sale, or keep in possession, any fireworks within the city of Boston contrary to the rules and regulations established by the board of engineers herein mentioned, or who shall sell any fireworks in said city without first having obtained from the said chief engineer or his secretary a license as aforesaid, shall forfeit a sum not less than fifteen nor more than fifty dollars for each offence. May be rescinded.

26. No association,<sup>3</sup> society, or club organized as firemen, shall Penalty. Ibid. § 2.

<sup>1</sup> See *Burning Fluids*, p. 94, *ante*, and *Gunpowder*, § 23.

<sup>2</sup> See *Rules and Regulations* in the *Supplement*.

<sup>3</sup> For the incorporation of the Charitable Association of the Boston Fire Department, and a subsequent act respecting the same, see 1829, c. 44, and 1838, c. 131.

to be established, unless, &c.  
G. S. 24, § 49.  
Penalty for joining without permission.  
Ibid. § 50.

be allowed in any city or town except by the written permission of the mayor and aldermen or selectmen.

Two preceding sections to be in force only where, &c.  
G. S. 24, § 51.

Cutting, &c., bell rope, engine, &c., within twenty-four hours of fire.  
Ibid. 161, § 8.

27. Whoever joins, belongs to, or assembles with such association, society, or club, existing without such permission, shall be punished by fine not less than five nor more than one hundred dollars, or by imprisonment in the house of correction, for a term not exceeding three months.

28. The provisions of the two preceding sections shall be in force in those cities and towns only which have adopted or may adopt the same.

Cutting same, at time of fire, or preventing alarm or extinguishing fire.  
Ibid. § 9.

29. Whoever, within twenty-four hours prior to the burning of a building or other property, wilfully and maliciously cuts or removes any bell rope in the vicinity of such building or property, or cuts, injures, or destroys any engine or hose or other apparatus belonging to an engine in said vicinity, shall be deemed guilty of the burning, as accessory before the fact, and be punished accordingly.

30. Whoever, during the burning of a building or other property, wilfully and maliciously cuts or removes any bell rope in the vicinity of such building or property, or otherwise prevents an alarm being given, or cuts, injures, or destroys an engine or hose or other apparatus belonging to any engine in said vicinity, or otherwise wilfully and maliciously prevents or obstructs the extinguishing of any fire, shall be deemed guilty of the burning, as accessory after the fact, and be punished by imprisonment in the state prison not exceeding seven years, or in the jail not exceeding three years, or by fine not exceeding one thousand dollars.

Stealing at a fire.  
Ibid. § 16.  
See c. 116.  
§ 14.  
c. 120, § 41.

31. Whoever steals in a building that is on fire, or steals any property removed in consequence of an alarm caused by fire, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, and imprisonment in the jail not exceeding two years.

ORDINANCE.<sup>1</sup>

SECTION 1. The fire department shall consist of a chief engineer, nine assistant engineers, and of as many foremen, enginemen, hosemen, and hook and ladder men, and other persons, to be divided into companies, as the number of engines and the number and quantity of other fire apparatus, belonging to the city shall from time to time require.

Fire department to consist of engineers, foremen, enginemen, &c.  
Aug. 20, 1861.

SECT. 2. There shall be elected annually, on the first Monday in February, or within sixty days thereafter, by a concurrent vote of the two branches of the city council, a chief engineer and nine assistant engineers, one at least from each fire district, who shall hold their office for one year from the first Monday of April in the year in which they shall be elected, and until their successors shall be elected and qualified, unless sooner removed. They shall be removable at the pleasure of the city council, and all vacancies may be filled at any time for the unexpired term. They shall receive such compensation as the city council shall from time to time determine.

Chief and other engineers to be elected annually; tenure of office; vacancy; compensation.  
Ibid.

SECT. 3. On the first Monday of April, annually, said chief and assistant engineers shall meet and organize themselves as a board of engineers. The chief engineer shall preside at said meeting and at all meetings of the board when present, but in his absence the senior assistant engineer in service present shall preside, and their seniority in rank, and all questions relative thereto, shall be determined by the board of aldermen. The board of engineers may recommend to the city council some person to be elected secretary of said board, and the city council shall, on the first Monday of April, or within thirty days thereafter, by concurrent vote, elect a secretary, who shall hold his office for one year from the first Monday of May in the year in which he shall be elected, and until his successor shall be elected and qualified, unless sooner removed. He may be removed, and a vacancy may be filled as provided for in the case of the engineers, in the second section of this ordinance. He shall receive such compensation as the city council may from time to time determine. He shall be sworn, and give

Organization of board; rank of engineers; election of secretary; his tenure of office; compensation, to be sworn and give bonds.

<sup>1</sup> An ordinance in relation to the fire department, passed August 20, 1861, and amended November 26, 1861.

Aug. 20, 1861. bond with surety for the faithful performance of his duty, in such sum as the board of aldermen shall direct.

Meetings of the board; quorum. Ibid.

Rules and orders for the board. Ibid.

Powers and duties. Ibid.

Rules and regulations for the department, &c. Ibid.

To be approved by aldermen, &c. Ibid. Secretary shall act as clerk, &c. Ibid.

Keep account of appropriations and expenditures, &c. Ibid.

SECT. 4. The engineers shall, at such times as they may by their by-laws determine, hold such meetings as may be necessary for the prompt transaction of all business coming before them, and a majority of the whole board shall be necessary to constitute a quorum. They may make such rules and orders for their government as a board of engineers as they may see fit, subject to the approval of the board of aldermen. They shall be responsible for the discipline, good order, and proper conduct of the whole department, both officers and men, and for the care of all houses, engines, hose-carriages, hook and ladder carriages, horses, furniture, and apparatus thereto belonging. They shall have the superintendence and control of all the engine and other houses used for the purposes of the fire department, and of all the horses, furniture, and apparatus thereto belonging, and of the engines and all other fire apparatus belonging to the city, and over the officers and members of the several companies attached to the fire department, and over all persons present at fires; and they may make such rules and regulations for the better government, discipline, and good order of the department, and for the extinguishment of fires, as they may from time to time think expedient;—such rules and regulations not being repugnant to the laws of this commonwealth, nor to any ordinance of the city, and being subject to the approbation of the board of aldermen, and to alteration or rescission by them at any time.

SECT. 5. The secretary to the board of engineers shall perform the ordinary duty of clerk to the board, and such other duties as the board of aldermen or the chief engineer may from time to time direct; and also such other duties as the board of engineers, by their rules and orders, to be approved by the board of aldermen, may from time to time determine. He shall keep an account of the appropriations made by the city council for the use of the fire department, and of the expenditures on account of the same, and shall compare his account monthly with the auditor's books, and see that the expenditures

of the fire department do not at any time exceed the amount of Aug. 20, 1861. the appropriations at their disposal. He shall also keep a separate account of the expenses of each engine, hose-carriage, and hook and ladder carriage, and of the horses, furniture, and apparatus thereto belonging, and all other incidental expenses, and shall present to the city council, in the annual report of the chief engineer, full and detailed statements thereof.

SECT. 6. It shall be the duty of said engineers, whenever a fire shall break out in the city, immediately to repair to the place of such fire, and to carry with them a suitable staff or badge of their office; to take proper measures that the several engines and other apparatus be arranged in the most advantageous situations, and duly worked for the speedy and effectual extinguishment of the fire; to require and compel assistance from all persons, as well members of the fire department as others, in extinguishing the fire, removing furniture, goods, or other merchandise from any building on fire, or in danger thereof, and to appoint guards to secure the same; and also in pulling down or demolishing any house or building if occasion require, and further to suppress all tumults and disorders. It shall also be their duty to cause order to be preserved in going to, working at, or returning from fires, and at all other times when companies attached to the department are on duty. The assistant engineers shall report their absences from fires to the chief engineer, with the reasons therefor, who shall keep a record of the same, and, once every three months, and oftener if required, make a report thereof, stating all the facts to the city council. In the absence of the chief engineer, the secretary shall make said record and report.

Engineers' powers and duties at fires. Ibid.

May compel assistance from all persons. Ibid.

May demolish buildings. Ibid.

SECT. 7. Whenever any fire occurs in either of the adjoining cities or towns, it shall be the duty of only such and so many of said engineers to repair thither as shall have been previously designated for such purpose by the chief engineer.

Fires out of the city. Ibid.

SECT. 8. The chief engineer shall have the sole command at fires, over all the other engineers, and all officers and members of the fire department, and all other persons who may be present at fires, and shall direct all proper measures for the extinguish-

Chief engineer, sole command at fires. Ibid.

Powers and  
duties of chief  
engineer.  
Aug. 20, 1861.

ment of fires, protection of property, preservation of order, and observance of the laws, ordinances, and regulations respecting fires ; and it shall be the duty of said chief engineer to examine into the condition of the engines and all other fire apparatus, and the horses connected therewith, and of the engine and other houses belonging to the city, and used for the purposes of the fire department, and of the companies attached to the said department, as often as circumstances may render it expedient, or whenever directed so to do by the board of aldermen, or by the committee of the board of aldermen on the fire department. Whenever the engines or other fire apparatus, engine or other houses used by the fire department, require alterations, additions, or repairs, the chief engineer, under the direction of the board of aldermen or of the committee on the fire department, shall cause the same to be made. It shall also be the duty of the chief engineer to receive and transmit to the board of aldermen all returns of officers, members, and fire apparatus made by the respective companies, as hereinafter prescribed, and all other communications relating to the affairs of the fire department ; to keep fair and exact rolls of the respective companies, specifying the time of admission and discharge, and the age of each member. He shall also critically examine all the bills and accounts against the fire department, and certify, in writing, to the correctness of each item thereof before sending them to the auditor's office for payment. He shall annually, in the month of January, and oftener if thereto requested, report to the city council an account, to be prepared by the secretary to the board of engineers as hereinbefore provided, of the condition of the engine houses, engines, fire apparatus, and other property under his charge ; of the income and expenditures of the fire department for the whole of the previous year, specifying particularly the expenditure on each engine, hose-carriage, and hook and ladder carriage, and of the horses, furniture, and apparatus connected therewith, as required in section five of this ordinance, together with the names of the officers and members of the various companies ; the number and location of the fire-alarm stations ; the number of fires since his last report, and

the causes thereof, and the extent of damage as near as can be ascertained; the general description of the buildings and property destroyed or injured since his last report, together with the names of the owners or occupants; the amount of insurance, if any; all accidents by fire which may happen within the city, with such other information or suggestions as may in his opinion be of general use; the same to be published as the city council may direct.

SECT. 9. In case of the absence of the chief engineer, the engineer next in rank who may be present shall execute the duties of his office with full powers.

When chief engineer is absent next in rank to act.  
Ibid.  
Engineers to report persons who disobey orders.  
Ibid.

SECT. 10. It shall be the duty of the chief engineer, and of the other engineers, to report to the board of aldermen the name of every person, not a member of either of said companies, who shall, contrary to law, refuse or neglect to obey any orders of any engineer, given at any fire.

SECT. 11. Whenever it shall be adjudged at any fire, by any three or more of the engineers present, of whom the chief engineer, if present, shall be one, to be necessary, in order to prevent the further spreading of the fire, to pull down or otherwise demolish any building, the same may be done by their joint order.

Buildings may be demolished  
Ibid.

SECT. 12. It shall be the duty of the chief and other engineers, to inquire for and examine into all shops and other places where shavings or other such combustible materials may be collected or deposited, and at all times to be vigilant in taking care of the removal of the same, whenever, in the opinion of any two of them, the same may endanger the security of the city from fires, and to direct the tenant or occupant of said shops or other places to remove the same; and, in case of such tenant's or occupant's neglect or refusal so to do, to cause the same to be removed at the expense of such tenant or occupant, who shall, in addition, be liable to a penalty of not less than two nor more than fifty dollars for such neglect or refusal; and any person who shall obstruct the engineers or any of them in carrying out the provisions of this section, shall also be liable to a penalty of not less than two nor more than fifty dollars. It shall also

Engineers shall search for combustibles and cause their removal.  
Ibid.

Tenant, &c., liable to penalty for not removing, &c.  
Ibid.

Buildings in which steam engines are used, and other buildings to be examined.  
Aug. 20, 1861.

Wooden buildings, prosecutions relating to.  
Ibid.

Gunpowder, powers relating to, to be exercised by engineers.  
Ibid.

Fines and penalties to be paid to city treasurer, except, &c.  
Ibid.

be the duty of said engineers to take cognizance of all buildings in the city in which any steam-engine shall be used, and of all buildings in the city in process of erection or alteration, and to make a record of such thereof as in their judgment may, from any cause, be dangerous, and report the same to the board of aldermen forthwith. It shall also be the duty of said engineers to cause prosecutions to be instituted in all cases of infraction of the laws relative to the erection of wooden buildings, or of any other laws or ordinances in relation to the fire department, or for the prevention of fire within the limits of the city.

SECT. 13. The power of making and establishing rules and regulations for the transportation and keeping of gunpowder within the city of Boston, and of granting licenses for the keeping and sale thereof in the city, according to the provisions of an act entitled "An act further regulating the storage, safe-keeping, and transportation of gunpowder in the city of Boston,"<sup>1</sup> and of any other act or acts on the same subject, shall be exercised and performed by the chief and assistant engineers, and the power and duty of seizing any gunpowder kept or being within the city or harbor thereof, contrary to the provisions of the said act or acts, shall be exercised and performed by the said engineers or any of them; and in any case of any seizure being made by any engineer other than the chief, he shall forthwith report to the chief engineer, and the chief engineer shall cause all gunpowder which may have been seized as aforesaid to be libelled and prosecuted in the manner prescribed in the said acts; and all the other powers and duties granted and enjoined in and by the said act or acts shall be performed by the said chief or one of the assistant engineers.

SECT. 14. All moneys received for fines, forfeitures, and penalties arising under this ordinance or the laws of this commonwealth, regulating the storage and transportation of gunpowder, or the erection of buildings within the city of Boston, or the prevention and extinguishment of fire, unless by such laws otherwise specially provided, shall be paid into the treasury of the

<sup>1</sup> Act of 1813 c. 143; 1833 c. 151; 1837 c. 99; 1841 c. 58; see *Gunpowder*, §§ 4-18, *post*, pp. 231-236.

city, to be applied in such way as is provided in the acts of this Aug. 20, 1861. commonwealth.<sup>1</sup>

GENERAL PROVISIONS CONCERNING OFFICERS AND MEMBERS OF  
THE FIRE DEPARTMENT.

SECT. 15. No person under twenty-one years of age shall be an officer or member of the fire department; nor shall any person be an officer or member who is not a legal voter in the city of Boston. Qualification to be members of the fire department. Ibid.

SECT. 16. Every officer and every member of the fire department shall sign the following agreement, to be deposited with the board of engineers: "I, A B, having been appointed a member of the Boston fire department, hereby signify my agreement to abide by all the ordinances of the city council, and the rules and regulations of the board of aldermen and of the board of engineers relating thereto." And any officer or member who shall neglect or refuse to sign the same, shall not be entitled to any compensation whatsoever. Members shall sign agreement. Ibid.

SECT. 17. It shall be the duty of the board of engineers to report from time to time to the mayor the names of such officers or members of the department, if any, as in their judgment should be removed or discharged, with their reasons therefor; and whenever, from any cause, a vacancy shall occur in the department which is to be filled by the mayor and aldermen, the board of engineers shall recommend to them for their consideration the name of some proper person to fill the same. Engineers to report persons for removal, and to fill vacancies. Ibid.

SECT. 18. Any officer or member of the fire department, except the chief and assistant engineers, and the superintendent of fire alarms and his assistants, may at any time by the mayor be removed or dismissed from the department, or deposed from any office that he may hold therein. Members may be removed by the mayor, except, &c. Ibid.

SECT. 19. In all cases of removal from the department, the name of the party removed, with a statement of the reasons therefor, shall be entered on the records of the engineers, and a If removed, record to be sent to aldermen.

<sup>1</sup> See *Gunpowder*, § 16, which provides for the disposition of fines, forfeitures, and penalties.

Aug. 20, 1861. copy of the same shall be transmitted to the board of aldermen before their next regular meeting.

Compensation of members. Ibid. SECT. 20. There shall be paid to each officer and member of the department such sum as the city council may, from time to time, determine; and in case of the temporary absence of any member from the city, or inability to perform his duties, in consequence of sickness, he shall provide a substitute, whose name he shall return to the foreman of the company for approval, failing in which he shall be subject to all deductions which may accrue for his absence.

Substitute.

Meetings in engine houses, &c., prohibited. Ibid. SECT. 21. Neither the members nor the officers of any of the companies shall assemble in any of the engine or other houses belonging to the department, except *as herein prescribed*, and for taking the engine or other apparatus on an alarm of fire, and of returning the same to the house, and taking the necessary care of said apparatus after its return.

Neglect, &c., cause of dismissal. Ibid. SECT. 22. Any officer or member of the fire department who shall wilfully neglect or refuse to perform his duty, or shall be guilty of disorderly conduct or disobedience to his superiors in office, shall for such offence, besides being subject to the penalty hereinafter provided, be dismissed from the department.

Seven years service. Ibid. SECT. 23. Every person who shall have served according to law in the fire department for seven successive years, shall be entitled to receive a certificate thereof, signed by the mayor of said city; and all persons who shall receive said certificate as aforesaid, shall be entitled to wear the badge of the department, and to do duty therein, when desired so to do by the mayor, with the advice and consent of the board of aldermen, under such organization and management as they may determine.

#### ENGINE, HOSE, AND HOOK AND LADDER COMPANIES, AND DUTIES OF OFFICERS AND MEN.

Number of companies, how formed. Ibid. SECT. 24. As many engine, hose, and hook and ladder companies shall from time to time be formed by the board of aldermen as they shall deem expedient, and each company shall consist of as many officers and members as shall be appointed from

time to time by the mayor with the advice and consent of the Aug. 20, 1861.  
board of aldermen.

SECT. 25. The officers and members of the fire department shall be paid quarterly, except when otherwise ordered by the city council; and every officer or member thereof who shall not serve the whole of the quarter except in case of sickness, death, or removal from the city, or who shall be removed from the department or deposed from his office for cause, shall forfeit any and all compensation that would otherwise have been due to him at the time when such service ceased, or such deposing or removal took place.

To be paid  
quarterly,  
except, &c.  
Ibid.

SECT. 26. Every engine company shall have an engineman, fireman, and driver, who shall be permanently employed, and who shall at all times be in or about the engine house, except when unavoidably absent, and shall also have, until otherwise ordered, eight hosemen, including the foreman.

Engine compa-  
nies to consist  
of foreman,  
&c.  
Ibid.

SECT. 27. Each hose company shall have a driver, who shall at all times, except when unavoidably absent, be in or about the house, and shall also have, until otherwise ordered, eight hosemen, including the foreman.

Hose compa-  
nies to have  
foreman, &c.  
Ibid.

SECT. 28. Each hook and ladder company shall have three or more each of axemen and rakemen.

Axemen and  
rakemen.  
Ibid.

SECT. 29. The board of engineers shall make rules and regulations in respect to a driver and steward, either permanent or temporary, of hook and ladder companies, and define their duties; such rules and regulations however being subject to approval, alteration, or rescission, as provided in the fourth section of this ordinance.<sup>1</sup>

Driver and  
steward.  
Ibid.

SECT. 30. Every engine, hose, and hook and ladder company shall have a foreman and clerk, and every hook and ladder company an assistant foreman in addition; the foreman and assistant foreman to be nominated annually at least, or, whenever a vacancy occurs, by the members of the respective companies, from among their own number, and a return of the same made to the board of engineers; and in case of rejection by them, the

All companies  
to have fore-  
man and clerk,  
hook and lad-  
der an assistant  
foreman. How  
appointed.  
Ibid.

<sup>1</sup> See *Rules and Regulations* in the *Supplement*.

Aug. 20, 1861.

name of the person so rejected shall be returned to the company, who shall select another person for approval ; and whenever any person so nominated shall be approved by the board of engineers his name shall be sent to the board of aldermen for approval or rejection, and in case of rejection another person shall be nominated, as aforesaid, before the next regular meeting of the board of aldermen, and the like proceedings had as before ; and these officers, when approved, shall receive certificates of appointment, signed by the mayor, and shall hold their places until removed, or others shall be appointed in their stead. If, upon rejection by the board of engineers or board of aldermen of any person nominated and returned as aforesaid, a suitable person is not nominated and returned by the company as aforesaid, within one week from the date of the reception of notice of such rejection, the board of engineers shall themselves send to the board of aldermen, for their approval or rejection, the name of some suitable person for the place, to be selected from the same company. And if any hook and ladder company shall not have a driver, a clerk of such company shall be nominated and selected in the same manner as the foreman.

Engineman,  
his duties and  
responsibilities.  
Ibid.

SECT. 31. The engineman shall, under the direction of the board of engineers, have the sole care of the engine house intrusted to him, and of all the property therein belonging to the city. He shall be held personally responsible for the care and good order of the engine, and shall work and manage the same, and see that it is at all times in condition for immediate use. He shall be accountable for the proper performance of all duties required of the firemen and driver, and in case of any neglect or delinquency on their part, shall report the same to the chief engineer.

Foreman, his  
duties and  
powers.  
Ibid.

SECT. 32. The foreman of each engine shall, at fires, direct the placing of the engine at a suitable place to obtain a supply of water, and have the charge and direction of the hose and hosemen ; and the foreman of each hose company or hook and ladder company shall have charge of the apparatus belonging to his company, and the direction thereof, and of the driver and men belonging to his company. And the foreman of every company

shall preserve order and discipline, at all times, among the Aug. 20, 1861. members of the company under him, and require of them and enforce a strict compliance with the city ordinances, the rules and regulations of the department, and the orders of the engineers.

SECT. 33. In the absence of the foreman of any company, In absence of foreman, assistant, &c., to act. Ibid. the assistant foreman, if there shall be one, otherwise the senior hoseman, or hook and ladder man in service present, as the case may be, connected with the same company, shall perform the duties of the foreman.

SECT. 34. The fireman shall be under the immediate direc- Fireman, his duties. Ibid. tion of the engineman, and shall perform all the duties that may be required of him by the engineman, on the engine and in the house, including cleaning the house, the engine, and other apparatus belonging to the company, and the snow and ice from the sidewalk.

SECT. 35. The drivers belonging to the respective companies Drivers, their duties. Ibid. shall take care of, and properly groom the horses belonging to their respective companies, see that the same are at all times ready for immediate use, convey the apparatus to the place of the fire on an alarm being sounded, and be clerks of their respective companies. And it shall, in addition, be the duty of such of the drivers as shall be connected with hose or hook and ladder companies to see that the hose or other apparatus is ready at all times for immediate use, and to keep such hose and apparatus, and the house and stable neat and clean, and clear the snow and ice from the sidewalks in front of the respective houses, and they shall be under the immediate direction of the fireman of their respective companies. The driver of each engine shall be under the immediate direction of the enginemen, and shall, besides the duties herein prescribed to be performed by him, assist the fireman in the performance of his duties, and perform such other duties as may be required of him by the engineman.

SECT. 36. The clerks of the respective companies shall keep Clerks to keep rolls, and account of property. fair and exact rolls, specifying the time of admission, discharge, and age of the respective members of their companies, and shall

- Aug. 20, 1861. also keep; in books provided by the city for that purpose, correct and faithful accounts of all city property intrusted to or connected with their respective companies, and of all absences and tardiness of the officers or members thereof, which rolls and record books shall always be subject to the order of the board of engineers, or to the board of aldermen. Said clerks shall also make, or cause to be made to the chief engineer, true and accurate returns, whenever called upon so to do, of all the members, with their ages, and of all the apparatus belonging to or connected with their respective companies, and shall also report monthly, at least, to the chief engineer, all absences and tardiness aforesaid.
- Returns of members, &c. Ibid. SECT. 37. The hosemen of each engine company and of each hose company, and the axemen and rakemen and other members of each hook and ladder company, shall perform such duties as may be required of them by their respective foremen.
- Monthly report. Ibid. SECT. 38. The board of engineers, whenever in their judgment it may be expedient, may employ or permit to stay or sleep in the house, wherein a hose carriage or hook and ladder carriage is kept, one member from the same company in addition to the driver.
- Hosemen, axemen, and rakemen, their duties. Ibid. SECT. 39. It shall be the duty of the officers and members of the several engine, hose, and hook and ladder companies, whenever a fire shall break out in the city, to repair to the place of the fire with their respective engines, hose, hook and ladder carriages, and other apparatus, in as orderly a manner as may be according to the directions, if any given, of the board of engineers, and exert themselves in the most orderly and efficient manner possible, in working and managing the said engines, hose, hooks and ladders, and other apparatus, and in performing any duty that they may be called upon to do by any engineer; and, upon permission of the chief or other engineer, in an orderly and quiet manner, to return said engines, hose, hook and ladder carriages, and other apparatus, to their respective places of deposit; *provided*, that, in the absence of all the engineers, such direction or permission may be given by the respective foremen.
- Permission to sleep in hose house, &c. Ibid.
- Duties of all members of fire department in case of fire. Ibid.

## GENERAL PROVISIONS.

SECT. 40. Whenever any person shall have received his certificate of appointment to any office under this ordinance, he shall thereby be immediately invested with all the authority conferred, and subject to all the duties imposed by the laws, the city ordinances, and the rules and regulations of the fire department; and whenever a vacancy shall occur in the department, the same shall be filled as soon as conveniently may be.

When appointed subject to all rules and regulations.  
Aug. 20, 1861.

Vacancies.  
Ibid.

SECT. 41. The engineers, officers, and members of the several companies shall, when on duty, wear such badges or insignia as the board of aldermen shall from time to time direct, to be furnished at the expense of the city, and no other person shall be permitted to wear the same, except under such restrictions and regulations as the mayor and board of aldermen may direct.

Members to wear badges such as aldermen direct.

Other persons shall not, &c.  
Ibid.

SECT. 42. No uniform, except such badges and insignia as are prescribed from time to time by the board of aldermen, shall be worn upon any occasion, by either officers or men belonging to the department, to indicate their connection therewith.

No uniform except, &c., to be worn.  
Ibid.

SECT. 43. No company shall have power to appoint or discharge any officer or member.

Companies not to appoint, &c.  
Ibid.

SECT. 44. No company shall leave the city, in case of fire in the neighboring cities and towns, except by the express order of the chief engineer or one of the assistant engineers; and no company shall leave the city for any other purpose.

Not to leave the city except, &c.

SECT. 45. No associations, or organized societies or clubs of firemen, as such, shall be allowed in the department, except by the express permission of the city council.

Clubs, &c., prohibited, except, &c.  
Ibid.

SECT. 46. No company shall be allowed to impose fines upon its members. For every absence or tardiness there shall be deducted from the pay of the absent or tardy officer or member the sum of twenty-five cents, which amount so deducted shall be paid over at the end of each quarter to the treasurer of the company to which such officer or member shall belong, to meet the incidental expenses of the company. And if any officer or member shall have been absent or tardy at more than one third of the fires, or alarms of fires, occurring during the month, if

Fines shall not be imposed by companies.  
Deductions for absence, &c.  
Ibid.

Absence, &c. cause of discharge.  
Ibid.

Aug. 20, 1861. more than five, except in case of sickness, such absence or tardiness shall be considered good cause for his discharge from the department.

Vacation may  
be granted.  
Ibid.

SECT. 47. The board of engineers, notwithstanding the provisions herein contained, may, with the approval of the mayor, grant to any officer or member of the fire department, if they shall think it compatible with the interests of the department, a vacation not exceeding two weeks in any one year upon such terms as they shall think expedient.

Substitute may  
be selected.  
Ibid.

And the mayor, with the advice and consent of the board of aldermen, may if he sees fit, whenever any member or officer of the fire department shall not by reason of such vacation, or sickness, or otherwise, attend to his duties in the department, appoint a substitute to act in his place during his absence.

#### DUTIES OF THE POLICE IN REGARD TO FIRES.

Police to give  
alarm, how.  
Ibid.

SECT. 48. Immediately upon an alarm or discovery of fire, it shall be the duty of the members of the police department to communicate the fact to the central station by means of the signal-boxes in the district in which the fire may be, in accordance with the rules and regulations in regard to fire alarms. And it shall be the duty of the policemen in the night-time, immediately upon an alarm of fire being given or sounded upon the bells connected with the fire-alarm telegraph, to give further notice thereof within their respective districts by springing their rattles, crying "fire," (and in East Boston by ringing a bell,) and mentioning the district and box of the district in which the fire exists.

Penalty for not  
doing it.  
Ibid.

And if any policeman shall neglect so to do, he shall forfeit and pay a fine of not less than two, nor more than twenty dollars for every offence.

Police selected  
for the purpose  
to repair to  
fires. Their  
duties.  
Aug. 20, 1861.  
Nov. 26, 1861.

SECT. 49. It shall be the duty of such of the police officers of the city as may be selected for that service, to repair with their staves, or such other badges of office as the board of aldermen shall direct, on the alarm of fire, immediately to the place where the fire may be, and there to use their best skill and power, under the direction of the engineers, for the preservation of the

public peace, and the prevention of theft and destruction of property, and the removal of all suspected persons.

## FIRE-ALARM TELEGRAPH.

SECT. 50. In the month of January in each year there shall be appointed a joint committee of the city council, to be called the committee on the fire-alarm telegraph, to consist of two aldermen and three members of the common council.

Fire-alarm telegraph, committee of to be chosen.  
Ibid.

SECT. 51. The said committee shall have the care and management of the rooms, apparatus, and machinery connected with the fire-alarm telegraph, and shall also have the power to appoint, upon the nomination of the superintendent, suitable persons to assist in the management of said fire-alarm telegraph, and also to discharge them, and to establish their compensation, unless it shall be specially provided for by the city council; and the said committee shall have power to determine the persons to whom shall be intrusted the keys of the signal boxes connected with the said fire-alarm telegraph, and, generally, shall have charge of the same, and control over the management thereof, subject to any special order of the city council.

Have care of rooms, apparatus, &c., of telegraph.  
Ibid.  
Nov. 26, 1861.

SECT. 52. There shall be elected annually on the first Monday in February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a superintendent of the fire-alarm telegraph, who shall hold his office for one year from the first Monday of April in the year in which he shall be elected, and until his successor is elected and qualified, or he is removed. He shall be removable at the pleasure of the city council, and all vacancies may be filled at any time for the unexpired term. He shall receive such compensation as the city council shall from time to time determine.

Superintendent of fire-alarm telegraph to be elected; tenure of office, &c.  
Ibid.  
Nov. 26, 1861.

SECT. 53. Said superintendent shall have the charge of the fire-alarm telegraph, under the direction of the committee on the fire-alarm telegraph, and shall see that the same is kept in good repair, and he shall be held responsible for the same.

Duties of superintendent.  
Ibid.

Alarms of fire.  
Aug. 20, 1861.  
Nov. 26, 1861.

SECT. 54. Alarms of fire shall be given by means of the fire-alarm telegraph in accordance with the rules and directions heretofore established for that purpose by the committee on the fire-alarm telegraph.<sup>1</sup>

Rules and reg-  
ulations may be  
altered, &c.  
Aug. 20, 1861.

SECT. 55. The committee on the fire-alarm telegraph shall have power from time to time to alter or change said rules and directions, and the same shall be binding upon all persons after said rules and directions, as altered, shall be placed on file in the office of the engineers of the fire department, and with the city clerk, and the same shall then be published; but the city council shall at all times have power to alter, amend, or annul the same.

Signal-boxes  
not to be  
opened or  
injured.  
Ibid.

SECT. 56. No person shall open any of the signal-boxes connected with the fire-alarm telegraph, for the purpose of giving a false alarm, or interfere in any way with said boxes, by breaking, cutting, injuring, or defacing the same, or turn the cranks therein, except in case of fire, or tamper or meddle with said boxes or any part thereof.

Penalties for  
breach of ordi-  
nance.  
Ibid.

SECT. 57. Any person who shall be guilty of a breach of any of the provisions of this ordinance, except as otherwise specially provided in any section thereof, shall forfeit and pay a fine of not less than two dollars nor more than fifty dollars for each offence.

Present mem-  
bers to continue  
in office, &c.  
Ibid.

SECT. 58. The present chief engineer and other engineers, and officers and members of the fire department, shall continue in the department and hold their respective offices therein; subject, however, to the provisions of this ordinance.

#### REPEALING CLAUSE, ETC.

Repeal of pre-  
vious ordi-  
nances,  
Ibid.

SECT. 59. The ordinance entitled "An ordinance establishing a fire department, and providing for preventing and extinguishing fires," passed on the eighth day of June, in the year of our Lord eighteen hundred and sixty, and all ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed; but this repeal shall not revive any ordinance or any part of any ordinance previously repealed.

<sup>1</sup> See Rules, &c., *Supplement*.

## FIRE-ARMS, BONFIRES, AND BRICKKILNS.

<p>ORDINANCE.</p> <p>1. Firing any gun, &amp;c., within the city, penalty for.</p>	<p>2. Bonfires, &amp;c., penalty for making any.</p> <p>3. Brickkiln, &amp;c., penalty for erecting, making, or firing any.</p>
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ORDINANCE.<sup>1</sup>

SECTION 1. No person shall fire or discharge any gun, fowl-  
ing-piece, or fire-arms within the limits of the city of Boston,  
under a penalty for every such offence of not less than one  
dollar, nor more than fifty dollars; *provided, however*, that this  
section shall not apply to the use of such weapons at any mil-  
itary exercise or review, or in the lawful defence of the person,  
family, or property of any citizen.

SECT. 2. If any person shall make any bonfire or other  
fire in any of the streets, squares, commons, lanes, or alleys,  
or on any wharf within the city, without the license of the  
board of aldermen, he shall be punished by a fine not exceeding  
fifty dollars.

SECT. 3. No person shall erect, make, or fire, or cause to  
be erected, made, or fired, within any part of the city, any  
brickkiln or limekiln, without the license of the board of alder-  
men, under a penalty of not less than one dollar nor more than  
fifty dollars, and a like sum for every week he shall continue  
such kiln after notice to remove the same.<sup>2</sup>

<sup>1</sup> An ordinance in relation to fire-arms, bonfires, and brickkilns, passed July 22, 1850.

<sup>2</sup> Two sections of the ordinance of July 22, 1850, relating to the keeping, selling, or firing of rockets or other fireworks are omitted, as by the special act of 1853, c. 154, all matters relating to fireworks in this city are placed under the control of the board of engineers. See *ante*, p. 209, §§ 24, 25.

## FUEL.

## ORDINANCE.

1. Committee of city council shall make contracts for fuel. Shall advertise for sealed proposals.

2. Fuel shall be weighed or measured. Superintendent of public buildings shall attend to delivery, &c.

ORDINANCE.<sup>1</sup>

Committee of city council shall make contracts for fuel. May 8, 1843. Feb. 9, 1846.

Shall advertise for sealed proposals.

Fuel shall be weighed or measured. May 8, 1843.

Superintendent of public buildings shall attend to delivery, &c.

SECTION 1. All contracts for wood, bark, coal, and other fuel for the use of the city, in each and every of its respective branches and departments, as well for the use of the public schools and primary schools, as all other public buildings and offices, excepting the several institutions at South Boston and Deer Island, shall be made by a committee of the city council, whose duty it shall be to advertise in the public newspapers in which the city ordinances are printed, for sealed proposals for furnishing the same, at least one week previously to making any contract for the same, and the proposals shall contain the terms for which each particular description of fuel will be furnished, separately and distinctly; and such proposals being considered, shall be accepted, or rejected, according to the terms, as may be deemed advisable by said committee; and the contract so made shall provide for the delivery of the same at such different times and in such places as may be required by the superintendent of public buildings during the year; and such contract shall be made annually, between the months of May and September.

SECT. 2. All fuel of every description which shall be contracted for, shall, previously to the delivery thereof, be weighed or measured by a weigher or measurer appointed for that purpose by the city; and it shall be the duty of the superintendent of public buildings to attend to the delivery and reception of the same, and to give certificates therefor, as the same is delivered, to the end that the proper quantity and quality may be ascer-

<sup>1</sup> An ordinance regulating the purchase of fuel for the use of the city, passed May 8, 1843, and February 9, 1846.

tained to have been received by the committee ; and it shall be <sup>May 8, 1843.</sup> the duty of the chairman of said committee to certify the bills of the same previously to the payment thereof.<sup>1</sup>

## GUNPOWDER.

## STATUTES.

1. Taking loaded arms into houses prohibited, under penalty of ten pounds.
2. Loaded arms in houses may be seized by engineers. To be sold at public auction if adjudged to be forfeited upon their complaint.
3. Appeals in such prosecutions.
4. Gunpowder, how much may be kept by any United States or State officer, and where.
5. Gunpowder kept contrary to the provisions of law, may be seized by engineers and sold.
6. Gunpowder exceeding one pound, not to be kept within two hundred yards of any wharf, or on the main land. Forfeiture.
7. No gunpowder to be sold within the city without license from engineers. Form of license to contain rules and regulations. Time in which it shall continue in force. Engineers may rescind same. Fees for license.
8. Engineers may establish rules and regulations.
9. Gunpowder in Boston kept contrary to the provisions of law, may be seized and libelled.

Service of copy and summons. Costs. Adjudication. Service may be made in any county.

10. Penalty for hindering engineers, or attempting to rescue powder. Duty of all citizens to assist the engineers.
11. Engineers may enter and examine stores, &c., of those licensed, to ascertain if their rules, &c., are observed. Power in case of fire. Search warrant.
12. Persons injured by gunpowder kept contrary to law, may have an action for damages.
13. Engineers to publish their rules and regulations in newspapers.
14. How fines, &c., may be recovered. Not necessary to set forth more of the act than is necessary to describe the offence.
15. Penalty for keeping or selling gunpowder, contrary to law.
16. Fines, &c., shall inure to the use of the engineers. Proviso.
17. When gunpowder, less than ten quarter-casks, is seized, a libel or complaint may be filed in the police court.
18. Fines may be sued for by chief engineer, or by one or more engineers, &c.

<sup>1</sup> For the liabilities of officers and agents of the city, see *ante*, p. 124, § 1. Stat. 1862, c. 101.

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| 19. Wilful and malicious explosion of gunpowder forbidden. Penalty.<br>20. Persons forbidden to throw into or against any dwelling-house, &c., gunpowder, or other explosive substance. Penalty.<br>21. Quality and size of casks, &c., for gunpowder. | 22. Casks to be marked.<br>23. Penalty for falsely marking.<br>24. Cities, &c., may order how gunpowder, &c., shall be kept.<br>25. Justices, &c., may issue warrants for searching places for gunpowder, &c., unlawfully kept.<br>26. Penalty for unlawfully keeping gunpowder, &c. |
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## STATUTES.

Taking loaded arms into houses prohibited, under penalty of ten pounds.  
 1782, 46, § 1.  
 1850, 262, § 3.

1. If any person shall take into any dwelling-house, stable, barn, out-house, warehouse, store, shop, or other building within the city of Boston, any cannon, swivel, mortar, howitzer, cohorn, or fire-arm, loaded with or having gunpowder in the same, or shall receive into any dwelling-house, stable, barn, out-house, store, warehouse, shop, or other building within said city, any bomb, grenade, or other iron shell, charged with, or having gunpowder in the same, such person shall forfeit and pay the sum of ten pounds, to be recovered at the suit of the engineers in an action of debt before any court proper to try the same; one moiety thereof to the use of said engineers and the other moiety to the support of the poor of said city.

Loaded arms in houses may be seized by engineers.  
 1782, 46, § 2.  
 1850, 262, § 3.

2. All cannons, swivels, mortars, howitzers, cohorns, fire-arms, bombs, grenades, and iron shells of any kind that shall be found in any dwelling-house, out-house, stable, barn, store, warehouse, shop, or other building, charged with or having in them any gunpowder, shall be liable to be seized by either of the engineers of said city; and upon complaint made by the said engineers to the court of common pleas, of such cannon, swivels, mortars, or howitzers, being so found, the court shall proceed to try the merits of such complaint by a jury; and if the jury shall find such complaint supported, such cannon, swivel, mortar, or howitzer shall be adjudged forfeit, and sold at public auction, and one half of the proceeds thereof shall be disposed of to the engineers and the other half to the use of the poor of the city of Boston. And when any fire-arms, or any bomb, grenade, or other shell shall be found in any house, out-house, barn, stable, store, warehouse, shop, or other building, so charged or having

To be sold at public auction if adjudged forfeit upon their complaint.  
 Ibid.

gunpowder in the same, the same shall be liable to be seized in 1850, 262, § 3.  
manner aforesaid; and on complaint thereof made and supported before a justice of the peace, shall be sold and disposed of as is above provided for cannon.

3. Appeals were provided for in prosecutions under the two Appeals.  
preceding sections, as was usual in other cases. 1782, 46, § 3.

4. No commissary, or any other officer or officers, or any person or persons in the service of the United States, or acting Powder, how much may be kept by any United States or State officer, and where. 1813, 143, § 1. 1850, 262, § 3.  
in the department of commissary or quarter master general of this commonwealth, shall be permitted to have, keep, or possess within the city of Boston, a greater quantity of gunpowder than four hundred pounds; and the powder so had and possessed within the said city shall be kept in a place approved of by the engineers of the said city, either under ground in a vault, or in a stone or brick building secured against explosion by fire.

5. Any gunpowder which shall be found in the possession Powder kept contrary to above provision, may be seized by engineers and sold. 1813, 143, § 2. 1850, 262, § 3.  
of, or which may be had or kept within the city of Boston by any officer or officers, or any person or persons whatsoever acting in behalf or under the authority of the United States, or by any agent or servant of such officers or persons, and all gunpowder possessed, had, or kept by any officer of the commissary or quarter-master general's departments of the State of Massachusetts, or persons acting under the authority of these departments, contrary to the provisions of the preceding section, may be seized by any two or more of the engineers of the city of Boston, and the same may be libelled and condemned and sold, and the proceeds thereof distributed, as is by law provided See § 16.  
for the forfeiture of gunpowder in other cases within said city.

6. No person, except on military duty in the public service Gunpowder exceeding one pound not to be kept within two hundred yards of any wharf, or on the main land. 1833, 151, § 1.  
of the United States, or of this commonwealth, shall keep, have, or possess in any building or in any place, or in any carriage, or on any wharf or on board of any ship or other vessel within two hundred yards of any wharf, or of the main land in the city of Boston, gunpowder, in any quantity exceeding one pound, in any way or manner other than by this and the eight following sections, and by the rules and regulations hereinafter mentioned, may be permitted and allowed. And

Forfeiture.  
1833, 151, § 1.

all gunpowder had, kept, or possessed contrary to the provisions of said sections and of such rules and regulations shall be forfeited, and liable to be seized and proceeded against in the manner hereinafter provided.

No gunpowder  
to be sold with-  
in the city,  
without license  
from engineers.  
Ibid. § 2.

7. It shall not be lawful for any person or persons to sell any gunpowder, which may at the time be within the city of Boston, in any quantity, without first having obtained from the engineers of said city a license, signed by the chief engineer or by the secretary of the board of engineers, on which shall be written or printed a copy of the rules and regulations by them established, relative to keeping, selling, and transporting gunpowder within said city; and every such license shall be in force for one year from the date thereof, unless annulled by the board of engineers, and no longer; but such license may, prior to the expiration of that term, be renewed by the chief engineer or the said secretary, from year to year, by indorsement thereon; *provided, always*, that the board of engineers may rescind any such license, if in their opinion the person or persons have disobeyed the law, or infringed any rules and regulations established by said board of engineers. And every person who shall receive a license to sell gunpowder, as aforesaid, shall pay for the same the sum of five dollars, and for the renewal thereof the sum of one dollar, which sums shall be paid to the board of engineers, for their use, for the purpose of defraying the expenses of carrying these enactments into execution.

Form of license  
to contain rules  
and regula-  
tions.  
Ibid.

Time in which  
it shall contin-  
ue in force.  
Ibid.

Engineers may  
rescind same.  
Ibid.

Fees for license.  
Ibid.

Engineers may  
establish rules  
and regulations.  
Ibid. § 3.  
Thacher's  
Crim. Cases, 14.

8. The board of engineers of the city of Boston may establish rules and regulations<sup>1</sup> from time to time, relative to the times and places at which gunpowder may be brought to or carried from said city by land or water, the times when and the manner in which the same may be transported through said city, to direct and regulate the kind of carriages and boats in which the same may be so brought to, carried from, and through said city, and to direct the manner in which gunpowder may be kept by licensed dealers and other persons, and to direct and require all such precautions as may appear to them needful and salutary to

<sup>1</sup> For rules and regulations of the board of engineers, see *Supplement*.

guard against danger in the keeping and transportation of gun- 1833, 151, § 3.  
powder.

9. All gunpowder which shall be kept, had, or possessed within the city of Boston, or brought into or transported through the same, contrary to the provisions of said sections<sup>1</sup> and to the rules and regulations made as aforesaid, may be seized and taken into custody by any one or more of the engineers of said city, and the same shall within twenty days next after the seizure thereof be libelled, by filing in the office of the clerk of the superior court for the transaction of criminal business, a libel, stating the time, place, and cause of such seizure, a copy of which libel, or the substance thereof, together with a summons or notice, which such clerk is hereby authorized to issue, shall be served on the person or persons in whose custody or possession such gunpowder shall have been seized, if such person be an inhabitant of this commonwealth, by delivering a copy thereof to such person or persons, or leaving such a copy at his, her, or their usual place of abode fourteen days at least before the sitting of the court at which the same is to be heard, that such person or persons may appear and show cause why the gunpowder so seized and taken should not be adjudged forfeit. And if the powder so seized shall be adjudged forfeit, the person or persons in whose custody or possession the same was seized, or the occupant or tenant of the place wherein the same was so seized, shall pay all costs of prosecution, and execution shall be issued therefor; *provided*, that it appear to the court that such person or persons had notice of such prosecution by service as aforesaid; and in case the person or persons in whose custody or possession such gunpowder may be seized shall be unknown to the engineer or engineers making such seizure, or in case such gunpowder, at the time of seizure, may not be in the custody or possession of any person, or if it shall appear by the return of the officers that such person cannot be found, or has no place of abode in this commonwealth, then said court shall and may proceed to adjudication thereon. And such libel or

Gunpowder in Boston kept contrary to law may be seized, &c. Ibid. § 5. 1 Met. 225, 232. Thacher's Crim. Cases, 14, 596.

Service of copy and summons. 1833, 151, § 5.

Costs.

Adjudication. Ibid.

Service may be

<sup>1</sup> That is, §§ 6, 7, 8, 9, 10, 11, 12, 13, and 14, in the text.

made in any  
county.  
1853, 151, § 5.

summons, and also such writ of execution for costs, shall and may be served and executed in any county in this commonwealth, and by any officer competent to execute civil process in like cases.

Penalty for  
hindering  
engineers or at-  
tempting to res-  
cue powder.  
Ibid. § 6.

10. Any person or persons who shall rescue, or attempt to rescue any gunpowder seized as aforesaid, or shall aid or assist therein, or who shall counsel and advise, or procure the same to be done, or who shall molest, hinder, or obstruct any engineer in such seizure, or in conveying gunpowder so seized to a place of safety, shall forfeit and pay a fine for each offence of not less than one hundred dollars and not exceeding five hundred dollars, to be sued for and recovered by action of the case by any person or persons who shall sue for the same in any court proper to try the same; and it is hereby made the duty of all persons to aid and assist each engineer or engineers in executing the duties hereby required.

Duty of all citi-  
zens to assist  
the engineers.  
Ibid.

Engineers may  
enter and ex-  
amine stores,  
&c., of those  
licensed, to sell  
if rules, &c.,  
are observed.  
Power in case  
of fire.  
Ibid. § 7.

11. The said engineers, or any of them, may enter the store or place of any person or persons licensed to sell gunpowder, to examine and ascertain if the laws, rules and regulations relating thereto are strictly observed; and on an alarm of fire may cause the powder there deposited to be removed, or destroyed as the case may require; and it shall be lawful for any one or more of the engineers of said city to enter any dwelling-house or other place in the city of Boston to search for gunpowder, first having obtained from a justice of the police court in said city a search warrant therefor, which warrant the justices of said court are hereby authorized to issue, upon the complaint of such engineer or engineers, supported by his or their oath.

Search warrant.  
Ibid.

Persons injured  
by gunpowder  
kept contrary  
to law, may  
have an action  
for damages.  
Ibid. § 8.

12. Any person who shall suffer injury by the explosion of any gunpowder had, kept, or transported within the city of Boston contrary to the provisions of said sections,<sup>1</sup> and of the rules and regulations established as aforesaid, may have an action of the case in any court proper to try the same, against the owner or owners of such gunpowder, or against any other person or persons who may have had the possession or custody of such gun-

<sup>1</sup> That is, §§ 6, 7, 8, 9, 10, 11, 12, 13, and 14, in the text.

powder at the time of the explosion thereof, to recover reasonable damages for the injury thus sustained. 1833, 151, § 8.

13. It shall be the duty of the engineers of the city of Boston to cause all such rules and regulations as they may make and establish, by virtue of the authority given as aforesaid, to be published in two or more newspapers printed in the city of Boston, and to cause such publication to be continued three weeks successively, for the information and government of all persons concerned. Engineers to publish their rules and regulations in newspapers. Ibid. § 9.

14. All fines, penalties, and forfeitures which may arise and accrue under the eight preceding sections shall and may be prosecuted for and recovered, either in the manner therein specially provided, or by indictment, complaint, or information in any court proper to try the same. And said act shall be taken and deemed to be a public act, of which all courts, magistrates, and citizens are bound to take notice as such; and in any libel, action, indictment, information, or complaint upon said act, it shall not be necessary to set forth any more of the same than so much thereof as relates to, and may be necessary truly and substantially to describe, the offence alleged to have been committed.<sup>1</sup> How fines, &c., may be recovered. Ibid. § 10.

15. Any person who shall keep, have, or possess any gunpowder within the city of Boston contrary to the provisions of the nine preceding sections, or to the rules and regulations of the board of engineers therein mentioned, or who shall sell any gunpowder in said city without having a license therefor, or contrary to such license or the rules and regulations aforesaid, shall forfeit a sum not less than one hundred dollars, and not exceeding five hundred dollars for each offence; and if any gunpowder kept contrary to the said provisions or to such license Penalty for keeping or selling gunpowder contrary to law. 1837, 99, § 1. 1 Met. 225. Ibid. 232. Thatcher's Crim. Cases, 14. Ibid. 596.

<sup>1</sup> The statute of 1833, c. 151, referred to in sect. 14, in the text, contained, in sect. 12, a general repeal of acts and parts of acts inconsistent therewith, which apparently repeals stat. 1792, c. 7; 1801, c. 20; 1803, c. 120; 1807, c. 137; 1816, c. 26; and 1820, c. 47.

It also provided, that all rules and regulations made and established by the engineers, under and by virtue of the provisions of former acts, should continue to have the same force and effect until altered or annulled by the said engineers, as if this act had not been passed.

1837, 99, § 1. or to the rules and regulations aforesaid, shall explode in any building or on board of any ship or other vessel, or in any place in said city, the occupant, tenant, or owner of which has not then a license to keep and sell gunpowder therein, such occupant, tenant, or owner shall forfeit a sum not less than one hundred dollars and not exceeding one thousand dollars for each offence.

How fines shall be appropriated.

Ibid. §§ 1, 2.

Proviso.

16. The several fines, penalties, and forfeitures, mentioned in the ten preceding sections, shall inure to the sole use of the board of engineers of the fire department of said city of Boston; *provided, however*, that whenever, on the trial of any prosecution under the said sections, any one or more of the said engineers shall be sworn and examined as a witness on behalf of the prosecution, a record thereof shall be made in court, and in such case the fine, penalty, or forfeiture shall inure to the use of the poor of the city of Boston, to be paid over to the overseers of the poor thereof.<sup>1</sup>

When gunpowder less than ten quarter-casks is seized, a libel or complaint may be filed in the police court.

1841, 58, § 1.

17. Whenever any quantity less than ten quarter-casks of gunpowder shall be seized and taken into custody by any one or more of the engineers of the fire department of the city of Boston, a libel or complaint may be filed in the clerk's office of the police court of said city of Boston, and the said police court of said city shall have jurisdiction thereof; and the like proceedings thereon, (excepting a trial by jury,) shall be had in said court as are provided for by the fifth section of the act passed on the twenty-fifth day of March, in the year one thousand eight hundred and thirty-three,<sup>2</sup> in the like cases of seizures and proceedings before the superior court, — saving always to any party aggrieved by any final judgment of said police court, the right of appeal and trial by jury in said superior court.

Fines may be sued for by chief engineer, or one or more engineers, &c.

18. All fines, penalties, and forfeitures imposed by the twelve preceding sections may be sued for and recovered by the chief engineer, or any one or more of the engineers of the fire department of the said city of Boston, or by any person thereto

<sup>1</sup> The third section of stat. 1837, c. 99, repealed the fourth and eleventh sections of stat. 1833, c. 151.

<sup>2</sup> That is, the ninth section in the text.

authorized by a vote of the board of engineers of the said fire department.<sup>1</sup> 1841, 58, § 2.

19. Whoever wilfully and maliciously, by the explosion of gunpowder or any other explosive substance, unlawfully destroys or injures any dwelling-house, office, shop, or other building, or any ship or vessel, shall be punished by imprisonment in the state prison not exceeding twenty years, or in the jail not exceeding five years, or by fine not exceeding one thousand dollars.

20. Whoever wilfully and maliciously throws into, against, or upon, or puts, places, or explodes, or causes to be exploded in, upon, or near any dwelling-house, office, shop, building, or vessel, any gunpowder or other explosive substance, or any bomb-shell, torpedo, or other instrument filled or loaded with any explosive substance, with intent unlawfully to destroy or injure such dwelling-house, office, shop, building, or vessel, or any person or property therein, shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding five years, or by fine not exceeding five hundred dollars.

21. Gunpowder manufactured in this state shall be put into strong and tight casks containing twenty-five pounds, fifty pounds, or one hundred pounds each, unless the same is well secured in copper, tin, or brass canisters holding not exceeding five pounds each, and closely covered with copper, brass, or tin covers.

22. Each cask containing gunpowder manufactured within this state, or brought into the same by land or water and landed, shall be marked on the head with black paint, in legible characters, with the word *gunpowder*, the name of the manufacturer, the weight of the cask, and the year in which the powder was manufactured; and each canister of gunpowder shall be marked with the word *gunpowder*.

23. Whoever knowingly marks a cask of gunpowder with

<sup>1</sup> For powers of the board of engineers to make rules and regulations relating to gunpowder, see *Fire*, ante, p. 216, § 13.

falsely marking, &c.  
S. G. 49, § 71.

the name of any person other than the manufacturer of the same, or changes gunpowder from a cask marked with the name of one manufacturer into a cask marked with the name of another manufacturer, shall for each offence forfeit a sum not exceeding twenty dollars.

Towns, &c.,  
may order how  
gunpowder,  
gun-cotton, &c.,  
shall be kept.  
Ibid. 88, § 48.

24. The city council of a city and the inhabitants of a town may order that no gunpowder shall be kept in any place within the limits thereof, unless it is well secured in tight casks or canisters; that no gunpowder above the quantity of fifty pounds shall be kept or deposited in any shop, store, or other building, or in a ship or vessel which is within the distance of twenty-five rods from any other building or wharf; that no gunpowder above the quantity of twenty-five pounds shall be kept or deposited in any shop, store, or other building within ten rods of any other building; and that no gunpowder above the quantity of one pound shall be kept or deposited in any shop, store, or other building within ten rods of another building, unless it is well secured in copper, tin, or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass, or tin covers. They may make a like order in regard to gun-cotton, or other substances prepared like it for explosion, and, if considered necessary for public safety, may restrict the quantity to be so kept to one fifth of the weight of gunpowder allowed by this section.

Justices to issue warrants  
for searching  
places where  
gunpowder,  
&c., is suspected  
to be unlawfully kept.  
Ibid. § 49.

25. Upon complaint made to a justice of the peace or police court by the mayor, or either of the aldermen, selectmen, or firewards of any place, that he has probable cause to suspect, and does suspect that gunpowder, gun-cotton, or other substance prepared like it for explosion, is deposited and kept within the limits thereof contrary to law, such justice or court may issue a warrant directed to either of the constables of such place, ordering him to enter any shop, store, or other building, or vessel specified in the warrant, and there make diligent search for such gunpowder, gun-cotton, or other substance suspected to have been so deposited or kept, and to make return of his doings to said justice or court forthwith.

Penalty for un-

26. Whoever commits an offence against any order made

under section twenty-four, shall forfeit a sum not exceeding twenty dollars ; but the two preceding sections shall not extend to any manufactory of gunpowder, gun-cotton, or other substance aforesaid, nor in any case prevent the transportation thereof through any city or town, or from one to another part thereof.

lawfully keep-  
ing gunpowder,  
&c.  
G. S. 88, § 50.  
1839, 135.

## HARBOR.

## STATUTES.

- |   |   |
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| <ol style="list-style-type: none"> <li>1. Concurrent jurisdiction of certain places ceded to the United States. Light-house on Light-House Island. Beacon. Castle Island and Governor's Island. Long Island Head. Half Way Rock. Nix's Mate. George's Island, and Lovell's Island. Minot's Rock or Ledge. Part of Great Brewster. Land for a light-house at the Narrows. Land for a beacon on Point Alderton.</li> <li>2. Rainsford Island conveyed in trust for a hospital.</li> <li>3. Hospital on Rainsford Island to be under the care of the board of aldermen of Boston.</li> <li>4. Board of aldermen to render an account annually.</li> <li>5. The governor authorized to release to the city of Boston the commonwealth's title to Rainsford Island.<br/><i>Under State management. Note.</i></li> <li>6. No earth or stones to be taken from Bird Island without license. Penalty.</li> <li>7. Penalty for carrying away earth, gravel, &amp;c., from islands in the harbor.</li> <li>8. Penalty for building a fire on Spectacle Island.</li> </ol> | <ol style="list-style-type: none"> <li>9. Line in the harbor from Federal Street Bridge to Warren Bridge established.</li> <li>10. Description of the line and alterations.</li> <li>11. Wharves, &amp;c., not to be extended beyond the line.</li> <li>12. No wharf, &amp;c., to be extended towards the line without leave.</li> <li>13. No wharf, &amp;c., to be erected or extended in the harbor.</li> <li>14. Penalty. Erection may be abated as a nuisance.</li> <li>15. Additional lines established.</li> <li>16. Lines between Federal Street Bridge and the Dover Street Bridge.</li> <li>17. Channel lines established.</li> <li>18. Description of lines.</li> <li>19. Restrictions as to building and filling.</li> <li>20. Penalty. May be abated as a nuisance.</li> <li>21. Lines between Warren Bridge (Boston side) and Milldam, and alterations.</li> <li>22. Lines on the Charlestown side of the harbor.</li> <li>23. Lines on the East Boston side of the harbor.</li> <li>24. No wharf, &amp;c., to be extended beyond the line, nor further towards the line, without leave of the legislature.</li> </ol> |
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25. Penalty. Erection may be abated as a nuisance.
26. Alteration of line between West Boston Bridge and the Boston and Roxbury Milldam.
27. Additional lines established, being the lines reported by commissioners.
28. First, second, and third lines described.
29. Fourth, fifth, sixth, seventh, eighth, and ninth lines described.
30. Tenth, eleventh, and twelfth lines described.
31. No wharf, &c., to be extended beyond said lines, or further towards them, without leave.
32. Penalties. Erections to be abated as nuisances.
33. Lines in Chelsea Creek described and established.
34. Line on East Boston side and line on Chelsea side, described.
35. No wharf, &c., shall be extended beyond said line.
36. Penalty. Erection may be abated as a nuisance.
37. Line between West Boston Bridge and Boston and Roxbury Milldam further altered.
38. No wharf, &c., to be extended beyond said line.
39. Proprietors authorized to extend wharves, &c., to said line, provided, &c.
40. Act not to take effect unless a sea-wall is built.
41. Additional lines in South Bay described.
42. No wharf, &c., to be extended without leave.
43. If extended, excavations to be made in the flats.
44. Persons offending, how punished. Erections may be abated.
45. Lines on Mystic River described.
46. No wharf, &c., to be made or extended. Persons offending, how punished. Erections may be abated.
47. Lines in Dorchester Bay and Neponset River described.
48. No wharf, &c., to be erected, &c., &c. Persons offending, how punished.
49. Lines from East Boston towards Breed's Island described.
50. No wharf, &c., to be erected, &c., &c. Persons offending, how punished.
51. Lines of wharves and flats between West Boston Bridge and the Milldam altered. City may accept or lay out streets. Sea-wall to be built within two years.
52. Line between Taylor's wharf and the jail wharf defined.
53. Tenth line in South Boston Bay altered. Old Colony and Fall River Railroad Company to build wall and remove projections.
54. No vessel to anchor except within certain limits. Penalty.
55. Trim of vessels at wharves. Penalty.
56. Penalty for throwing stones, &c., into the harbor.
57. Regulation of warps and lines. Penalty.
58. City council may appoint a harbor master. Bond. He may appoint a deputy in case, &c. Compensation.
59. His duties and authority.
60. Recovery of penalties.
61. Harbor master's further authority. Penalty for obstructing him in the performance of his duties, or for neglect to obey his orders. How to be recovered.
62. Master or owners of vessels liable to penalty for throwing stones, &c., in harbor.
63. All yards of vessels to be cock-billed, &c., while at wharf.
64. Vessels in harbor to keep an anchor watch and light. Penalty. How to be recovered.
65. No ashes, &c., to be thrown into the harbor.
66. Stones, gravel, &c., not to be

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| <p>taken from the islands, &amp;c. Penalty for so doing.</p> <p>67. Limits of Boston harbor. Jurisdiction therein.</p> <p>68. Same.</p> <p>69. Mooring to buoys, beacons, &amp;c., prohibited. Penalty. Injury to buoys, beacons, &amp;c. Penalty therefor. Forfeitures how recovered.</p> <p>70. Rafts, &amp;c., not to be moored to private bridges, wharves, &amp;c., except, &amp;c. Penalty.</p> | <p>71. Rafts, &amp;c., not to be moored to any public bridge, except, &amp;c.</p> <p>72. Harbor master to be appointed by mayor and aldermen. His duties to be regulated by city council, &amp;c.</p> |
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## ORDINANCE.

Joint standing committee on the preservation of the harbor, their duties, &c.

## STATUTES.

## ISLANDS.

1. Concurrent jurisdiction has been ceded to the United States, by the commonwealth of Massachusetts, over the following places in the harbor of Boston, viz:—

Concurrent jurisdiction of places ceded to the United States.

The light-house on Light House Island.

1790, 4, § 1.

The beacon on the spit of land near the light-house.

Ibid.

Castle Island.

1793, 13, §§ 1, 2.

Governor's Island.

1807, 125. 1846, 16, § 2. 1798, 13, §§ 1, 2.

Long Island Head for a light-house.

1819, 69, § 3.

Half-Way Rock for a beacon.

Ibid.

A place called Nix's Mate, for a beacon.

1832, 41.

George's and Lovell's Islands.<sup>1</sup>

1846, 16, § 1.

Minot's Rock, or Ledge, for a light-house.

1847, 109.

A portion of the island called the Great Brewster, for the purpose of the erection thereon of a sea-wall for the preservation of said island.<sup>2</sup>

1849, 45, §§ 1, 2.

<sup>1</sup> George's and Lovell's Islands were purchased of Levi Lincoln, Guardian of Caleb Rice, May 2, 1825, and were granted to the United States June 22, 1825. See *Suffolk Deeds*, Lib. 201, fol. 9. These islands were bought for the sum of \$6,000 in addition to an annuity of \$400 during the life of Caleb Rice. He died in September, 1848, and the total of annuities paid was \$10,350, which, with the principal sum of \$6,000, makes the total cost of these islands to the city \$16,350. See *City Records*, vol. 3, p. 74, and vol. 26, p. 524. Fort Warren is on George's Island.

<sup>2</sup> The Great Brewster Island, containing about sixteen acres, was purchased by the city in 1848, for the sum of \$4,000, for the purpose of protecting

1855, 17. Land for a light-house on the spit at the entrance of the Narrows.

Ibid. Land for a beacon on Point Alderton Bar, on the south side of entrance to Light-House Channel.

Rainsford Isl- 2. Rainsford Island was conveyed by deed, by John Loring  
and conveyed in trust, for a and others, December 7, 1736, to the treasurer and receiver-  
hospital. general of the province of Massachusetts Bay, "in trust for the  
Suffolk Records use of the governor, council, and assembly of his majesty's  
of Deeds, Lib. province of the Massachusetts Bay and their successors forever,  
53, fol. 162. to be used and improved for an hospital for the said province."

Hospital on 3. By the Revised Statutes it was provided that the hospital  
Rainsford Isl- establishment on Rainsford Island, the island itself, and all  
and to be under property thereon belonging to or connected with the said hospi-  
the care of the tal establishment, shall be under the sole care of the mayor and  
mayor and aldermen of Boston. aldermen of Boston; who shall appoint all such officers and  
R. S. 11, § 4. servants as they shall deem necessary, prescribe their respective  
But see pp. 15, duties, and establish their compensation.  
16, *ante*.

Mayor and al- 4. The said mayor and aldermen shall annually, in the  
dermen to ren- month of January, file in the office of the secretary of the com-  
der an account monwealth, an exact account of the state of the property of the  
annually. commonwealth belonging to, or connected with, the said hospital  
R. S. 11, § 5. establishment, and also of all money expended thereon, in the  
course of the preceding year.<sup>1</sup>

The governor 5. A resolve was passed April 16, 1846, that his excellency

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the harbor by a proper control over its beaches. *City Records*, vol. 26, p. 518.

Galloupe's Island, containing about sixteen acres, was purchased for the same purpose in 1860, for \$6,600. *City Records*, vol. 38, p. 276.

<sup>1</sup>By stat. 1839, c. 79, a new provision was made respecting the accounts of expenses on Rainsford Island, but that statute was repealed by stat. 1840, c. 88. By stat. 1841, c. 96, several new provisions were enacted, and the above sections of the Revised Statutes were repealed, but the fourth section contained a provision that the act should take effect, if the city council of Boston should accept the same, within sixty days after its passage; and it does not appear that they ever did accept it. In 1852, by an act of the legislature, the buildings on the island were ordered to be repaired, and were appropriated for the use of foreign sick paupers, arriving by water. By subsequent legislation all sick state paupers may be sent there. See *Records of City of Boston*, vol. 19, pp. 50, 61. See also *Charter*, p. 14, *ante*; stat. 1852, c. 275, § 11; 1853, c. 352, § 5; 1854, c. 189, § 6; 1854, c. 262; Gen. Stats. c. 71, §§ 26-31.

the governor, by and with the advice and consent of the council, be authorized and requested to inquire into and ascertain the title of the commonwealth to Rainsford Island, in the harbor of Boston, and to the State Arsenal, in the city of Boston, and that the governor, by and with the advice and consent of the council, have power to release unto the city of Boston all the right and title of the commonwealth to said island and arsenal, upon such terms and considerations as, in their judgment, the interests of the commonwealth may require.<sup>1</sup>

authorized to release to the city of Boston the commonwealth's title to Rainsford Island. Resolves, 1846, 138.

6. No earth or stones shall be taken from the island, called Bird Island, in Boston harbor, in the county of Suffolk, without license first had and obtained of the mayor and aldermen of the city of Boston, for that purpose, in writing, by the person taking the same, specifying the quantity allowed to be removed, and the object of removing it. And every person who, without permission obtained as aforesaid, shall remove any earth or stones from the said island, in any boat or in any ship or vessel whatsoever, shall forfeit and pay for each offence the sum of twenty dollars to the use of the said city, to be recovered by the mayor and aldermen of the said city, by an action of debt<sup>2</sup> in any court proper to try the same.

No earth or stones to be taken from Bird Island, without license. 1818, 4. See Charter, § 33, *ante*, p. 14. Penalty.

*Ibid.* §§ 1, 13.

7. If any person shall wilfully carry away from any island within the harbor of Boston, or from any beach adjacent thereto, any earth, gravel, stone, or other material composing such island, or beach, without the consent of the owner thereof, the person or

Penalty for carrying away earth, gravel, &c., from islands in the harbor,

<sup>1</sup> Deer Island, containing about one hundred and thirty-four acres of upland, and fifty acres of flats, was granted to the inhabitants of Boston, March 4, 1634-5 — and the income derived from its occupation and lease was devoted to the support of the free school in Boston.

May 15, 1753, a pest house was established on said island for the accommodation of sick persons arriving by sea. From this period the island was leased to different persons by the town and city until 1842, when the subject of locating the quarantine establishment on said island was agitated. In 1847, the fatal character of the "ship fever" which prevailed extensively among the immigrants at this port, determined the city government to place the house of industry on said island, which was also established as a place for quarantine. The house of industry, and house of reformation for boys and girls, are now located on this island.

<sup>2</sup> See Gen. Stats. c. 129, § 1.

1834, 168, § 1.  
Additional act,  
1856, 301.  
See p. 274, § 66.

persons so offending shall forfeit and pay for each offence, to the use of the commonwealth, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by indictment in any court competent to try the same; *provided*, that this act shall not be construed to prevent the taking of shell fish from such islands and beaches.<sup>1</sup>

Penalty for  
building a fire  
on Spectacle  
Island.  
1834, 168, § 2.

8. If any person shall wilfully build a fire on Spectacle Island, in the harbor aforesaid, without the consent of the owner or owners thereof, such person shall suffer the like forfeiture, and to be recovered and appropriated in like manner as is provided in the preceding section.

#### HARBOR LINES.<sup>2</sup>

Line in the har-  
bor from Free  
Bridge to War-  
ren Bridge  
established.  
1837, 229, § 1.  
7 Cush. 53.

9. By an act passed April 19, 1837, the line described in the following section, from the Free Bridge<sup>3</sup> in the harbor of Boston to Warren Bridge, in said harbor, was established as one of the lines in said harbor, beyond which no wharf or pier should ever be extended into and over the tide water of the commonwealth.<sup>4</sup>

<sup>1</sup>The act of 1845, c. 117, imposed a penalty on any person who should take, carry away, or remove any stones, gravel, or sand, from the beaches in the town of Chelsea. In the case of *Commonwealth v. Tewksbury*, 11 Met. 55, it was held that this act was passed for the purpose of protecting the harbor of Boston, and extended as well to the owners of the soil as to strangers; but that it was not such a taking of private property and appropriating it to public uses, within the meaning of the Declaration of Rights, art. 10, as to render it unconstitutional and void, although no compensation was therein provided for the owners. By the act of 1846, c. 206, the first-mentioned act was repealed as to part of said Tewksbury's beaches in Chelsea, and \$500 were ordered to be paid him out of the treasury of the commonwealth, "as an indemnity for the loss suffered by him under the operation of said act, by reason of being unnecessarily debarred from the use of his land, for the purpose, as was intended, of securing the harbor of Boston." See also act of 1847, c. 168, permitting the inhabitants of North Chelsea to take sand or gravel for agricultural purposes.

<sup>2</sup>In the case of *Commonwealth v. Alger*, 7 Cush. 53, it is decided that the legislature of Massachusetts have the power to establish lines in the harbor of Boston, beyond which no wharf can be extended or maintained, and to declare any wharf extended or maintained beyond such lines a public nuisance.

<sup>3</sup>Free Bridge is now known as Federal Street Bridge.

<sup>4</sup>A building which extends into the harbor of Boston, beyond the commis-

10. The said line begins at the east end of the north abutment of the Free Bridge,<sup>1</sup> and runs straight to the southerly corner of Brown's Wharf;<sup>2</sup> thence, by the end of the same, and of Wright's four wharves,<sup>3</sup> fronting on the channel, to the east corner of Wright's northeast wharf;<sup>4</sup> thence, on a straight line, to the south corner of Wales's Wharf, and by the end to the east angle of the same; thence, from this last point straight to the south corner of Arch Wharf; the line then follows the end of the last and Otis's Wharf to the east corner of the last; the direction is then straight to the southeast angle of Foster's South Wharf; then straight to the south corner of Rowe's Wharf. From this point in a straight direction to the south corner of Long Wharf; thence straight to the south angle of the advanced part of the said wharf,<sup>5</sup> and by the end of the same to the east corner thereof; thence the line is straight to the east end of Union Wharf. From the last point straight to the southeast corner of Battery Wharf. From this point to the west corner of Gray's Wharf the line is described by three equal chords of an arc of a circle of twelve hundred feet radius drawn through the southeast angle of Battery Wharf, and the west corner of Gray's Wharf. From Gray's the line is straight to the north corner of Vinal's Wharf. The line then passes along the end of this and Brown's Wharf<sup>6</sup> to the west corner of the last;<sup>7</sup> thence straight crossing

Description of  
the line.  
1837, 229, § 2.

This portion of  
the line fixed  
by act of 1850,  
216, § 1.

This portion of  
the line fixed  
by act of 1851,  
251.

sioners' line, established under the acts of 1837, c. 229, and 1840, c. 35, and which is also below low-water mark, and an obstruction to the navigation, is a public nuisance, notwithstanding it was erected previous to the passing of those acts. *Garey v. Ellis*, 1 Cush. 306.

<sup>1</sup> Federal Street Bridge.

<sup>2</sup> Now known as the South Wharf Company's Wharf.

<sup>3</sup> Now known as Hosley and Russell's, Adams's, Pray and Benson's, and Hill's wharves.

<sup>4</sup> This is the east corner of the wharf now known as Martin's or Hill's Wharf.

<sup>5</sup> An alteration has been made in the outer end of Long Wharf; a portion of the advanced part has been removed, and the point described as the "south angle of the advanced part," is a point one hundred and thirty-four feet from the south corner of Long Wharf, and sixteen feet from the present face of the wall, measuring at right angles therefrom.

<sup>6</sup> Brown's Wharf now forms a part of the Boston Gas Light Company's Wharf.

<sup>7</sup> This point is two hundred eighty-seven feet, at right angles from Charles

Charles River Bridge to the northeast corner of Trull's Wharf; thence the line is straight to the south abutment of Warren Bridge. Which said line thus described is part of the line reported by commissioners appointed under the resolve, passed the fifth of March, in the year one thousand eight hundred and thirty five, to survey the harbor of Boston, and by said commissioners drawn and defined on plans by them taken, and deposited in the [State] library, excepting that the line herein described and intended, varies from the line of said commissioners by crossing Charles River Bridge in a straight line from Brown's Wharf to Trull's Wharf, as above expressed.

Wharves, &c.,  
not to be ex-  
tended beyond  
the line.

1837, 239, § 3.

1850, 216, § 2.

7 Cush. 53.

No wharf, &c.,  
to be extended  
towards the  
line without  
leave.

1837, 229, § 4.

1850, 216, § 3.

11. It was prescribed by the said act of 1850, c. 216, § 2, that no wharf, pier, or building, or incumbrance of any kind should ever be extended beyond the said line into or over the tide water in said harbor.

12. It was also prescribed that no person should enlarge or extend any wharf or pier, which was then erected on the inner side of said line, further towards the said line than such wharf or pier then stood, or than the same might have been lawfully enlarged or extended before the passing of the said act, without leave first obtained from the legislature.

No wharf, &c.,  
to be erected or  
extended in  
the harbor.

1837, 229, § 5.

7 Cush. 53.

13. No person shall in any other part of the said harbor of Boston, belonging to the commonwealth, erect or cause to be erected any wharf or pier, or begin to erect any wharf or pier therein, or place any stones, wood, or other materials in said harbor, or dig down or remove any of the land covered with water at low tide, in said harbor, with intent to erect any wharf or pier therein, or to enlarge or extend any wharf or pier now erected; *provided, however*, that nothing herein contained shall be construed to restrain or control the lawful rights of the owners of any lands or flats in said harbor.

Penalty.

1837, 229, § 6.

7 Cush. 53.

14. Every person offending against the provisions of the five preceding sections, shall be deemed guilty of a misdemeanor, and shall be liable to be prosecuted therefor, by indictment or information in any court of competent jurisdiction, and on con-

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River Bridge, and two hundred seventy feet at right angles, from Commercial Street.

viction shall be punished by a fine not less than one thousand <sup>7 Cush. 53.</sup> dollars, nor more than five thousand dollars for every offence, and any erection or obstruction which shall be made, contrary <sup>Erection may be abated as a nuisance. Ibid.</sup> to the provisions and intent of said five preceding sections, shall be liable to be removed and abated as a public nuisance, in the manner heretofore provided for the removal and abatement of nuisances on the public highways.

15. By an act passed March 17, 1840, the lines described <sup>Additional lines established. 1840, 35, § 1. 7 Cush. 53.</sup> in sections sixteen, twenty-one, twenty-two, and twenty-three were established as the lines of the channel of the harbor of Boston, beyond which no wharf or pier should ever be extended into and over the tide water of the commonwealth.

16. The line between South Boston Free Bridge<sup>1</sup> and the old South Boston Bridge<sup>2</sup> on the north side of the channel, <sup>Lines between South Boston Free Bridge and the old South Boston Bridge. 1840, 35, § 2.</sup> begins at the east end of the north abutment of the South Boston Free Bridge, and runs westerly to the east corner of Wright's Wharf,<sup>3</sup> at the westerly side of said bridge, being forty-six feet from the west end of said abutment; thence westerly till it meets the northeasterly corner of the first wharf belonging to the South Cove Corporation;<sup>4</sup> thence southerly by the ends of the wharves of said corporation,<sup>5</sup> as now built, to Heath's Wharf,<sup>6</sup> and by the end of Heath's Wharf to the southerly corner thereof; thence southerly to South Boston Old Bridge, by a line drawn at right angles with said bridge, from a point two hundred and ninety-three feet westerly, from the westerly side of the draw of said bridge.<sup>7</sup> The line on the south side of the channel begins on the north side of South Boston

<sup>1</sup> Now known as Federal Street Bridge.

<sup>2</sup> Now known as Dover Street Bridge.

<sup>3</sup> Wright's Wharf now forms a part of the wharf belonging to the South Cove Corporation.

<sup>4</sup> Now belonging to the Boston and Worcester and Old Colony and Fall River Railroad Corporations.

<sup>5</sup> Now owned by various parties.

<sup>6</sup> Now known as Cobb's or Cowdin's Wharf.

<sup>7</sup> Dover Street Bridge was rebuilt in 1857, and the location of the draw changed; the distance on the northerly side of the bridge now being two hundred seventy-nine feet and five inches from the westerly side of the present draw.

Lines between  
South Boston  
Free Bridge and  
the old South  
Boston Bridge.  
1840, 35, § 2.

Old Bridge, at a point one hundred and seventeen feet<sup>1</sup> easterly from the westerly side of the draw in said bridge, and four hundred and seventy-four feet westerly<sup>2</sup> from the range line of the westerly side of the brick building standing at the corner, on the easterly side of First Street<sup>3</sup> and northerly side of Fourth Street, and four hundred and thirty feet from the face of the east stone abutment<sup>4</sup> of said bridge; thence running northerly to the southwesterly corner of Alger's Wharf;<sup>5</sup> thence by the end of said wharf to the northerly corner of the same;<sup>6</sup> thence northeasterly to the wharf belonging to the South Boston Iron Company,<sup>7</sup> thence to the end of George C. Thacher's large wharf,<sup>8</sup> and by the same to the northwest corner of said Thacher's small wharf;<sup>8</sup> and thence easterly by said small wharf, sixty-four feet to South Boston Free Bridge,<sup>9</sup> at a point forty-three feet northerly from the south stone abutment of said bridge; thence southerly by the westerly side of said bridge forty-three feet to the said abutment; thence easterly by said

<sup>1</sup> This point is distant one hundred twenty-three feet from the westerly side of the present draw.

<sup>2</sup> The distance given in the text is erroneous. The true distance from the range line of the westerly side of the brick building standing at the corner, on the easterly side of Foundry and northerly side of Fourth Streets, is four hundred ninety-three feet and six tenths.

<sup>3</sup> Foundry Street.

<sup>4</sup> The east stone abutment referred to is buried up, a portion of the easterly end of the bridge having been made solid.

<sup>5</sup> Alger's Wharf now forms a part of the solid filling bordering on the harbor commissioners' line north of Dover Street Bridge. The point above referred to in the text as the southwesterly corner of Alger's Wharf is an angle in the sea-wall belonging to the Old Colony and Fall River Railroad Corporation, distant five hundred twenty-three feet from Dover Street Bridge measuring on the before-described commissioners' line.

<sup>6</sup> This point is at another angle in said sea-wall distant sixty-eight feet from the last-mentioned point.

<sup>7</sup> Now forming a part of the solid wharf belonging to the Old Colony and Fall River Railroad Corporation.

<sup>8</sup> These two now form one wharf belonging to the Fulton Iron Foundry.

<sup>9</sup> South Boston Free Bridge, now Federal Street Bridge, has been rebuilt, widened, and the direction of the bridge slightly changed, making the angle with the bridge as now built seventy-six degrees three minutes, in place of seventy-five degrees as in the text. The abutment has not been changed.

abutment to the east end of the same; the said line then <sup>1840, 35, 2</sup> extends five hundred and twenty feet straight, so as to form an angle with said bridge of seventy-five degrees;<sup>1</sup> from this point, the line is straight in a northerly direction, in such position, that, if it is continued straight, it shall not approach within six hundred feet of Arch Wharf.

17. By an act passed May 25, 1853, the lines described in <sup>Channel lines established 1853, 385, § 1.</sup> sections eighteen and nineteen were established as lines of the channel of the harbor of Boston, beyond which no wharf or pier should ever thereafter be extended otherwise than is provided in said act, into or over the tide water of the commonwealth.

18. The inner line, marked A, in three parts, on the com- <sup>Description of lines. Ibid. § 2.</sup> missioners' plan hereinafter referred to, begins in South Boston at a point in the north line of Fourth Street, extended eastward one thousand feet from P Street, and runs thence northward parallel with P Street, fourteen hundred feet; thence northwestward till it intersects the east line of P Street, extended northward twenty-four hundred feet from Fourth Street; thence westward towards the south corner of Bull's Wharf, till it intersects the harbor line on the east side of Fore Point Channel, established by "An act concerning the harbor of Boston," <sup>1840, 35.</sup> passed on the seventeenth day of March, in the year eighteen hundred and forty. This is the extreme line of solid fillings. The outer line, marked B, in three parts on said plan, begins in South Boston, at a point in the north line of Fourth Street, extended eastward fourteen hundred feet from P Street, and runs thence northward, parallel with P Street, fourteen hundred feet; thence northwestward till it intersects the east line of P Street, extended northward, twenty-eight hundred feet from Fourth Street; thence westward, towards the south corner of Arch Wharf, till it intersects the harbor line aforesaid, on the east side of Fore Point Channel. This is the extreme line of any structure of any description whatever. The said lines thus described are the lines reported by the commissioners under resolves approved the third day of May, in the year one thousand <sup>See Resolves 1850, c. 111.</sup>

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<sup>1</sup> See note <sup>9</sup> on preceding page.

Channel lines.  
1853, 385, § 2.

eight hundred and fifty, authorizing the appointment of commissioners to define lines beyond which no wharves shall be extended into and over the tide waters of the commonwealth on the flats on the easterly side of Fore Point Channel, and the northerly shore of South Boston, and are drawn and defined upon a plan deposited by said commissioners in the state library.<sup>1</sup>

Restrictions as  
to building and  
filling.  
Ibid. § 3.

19. No solid structure or filling shall ever hereafter be extended beyond said inner line, marked A ; and no wharf, pier, or other structure whatsoever, shall ever hereafter be extended beyond said outer line, marked B, into or over the tide water of the commonwealth ; nor shall any wharf, pier, or other structure whatsoever, on the inner side of either of said lines, be extended further toward said lines, or either of them, than such wharf, pier, or other structure now stands, or might have been lawfully extended or enlarged before the passage of this act, without leave being first obtained from the legislature ; and the space between said lines shall be forever dedicated to dock purposes, in the shape of slips, wet docks, or basins, as the exigencies of commerce shall require, and the legislature shall hereafter order and direct.<sup>2</sup>

Penalty.  
Ibid. § 4.

20. Every person or corporation offending against the provisions of sections seventeen, eighteen, and nineteen shall be deemed guilty of a misdemeanor, and shall be liable to be prosecuted therefor, by indictment or information, in any court of competent jurisdiction, and on conviction shall be punished by a fine not less than one thousand dollars, nor more than five thousand dollars, for every offence ; and any erection or obstruction which shall be made contrary to the provisions and intent of this act shall be liable to be removed and abated, as a public nuisance, in the manner provided by law for the removal and abatement of nuisances on the public highway.

Lines between  
Warren Bridge  
(Boston side)

21. The line between the Warren Bridge and the Boston and Roxbury Milldam, on the Boston side of the channel, begins

<sup>1</sup> For additional lines on the southerly shore of South Boston, see stat. 1856, c. 293, § 4, pp. 263-265, § 41, *post*.

<sup>2</sup> See United States Harbor Commissioners' fifth report, City Doc. 1863, No. 35.

at the easterly end of the south abutment of Warren Bridge, and Milldam. 1840, 35, § 3. and runs by the face of said abutment to the west angle of the same. From this the line is straight to the northern angle of the solid part of the Boston and Lowell Railroad ground; the line then continues in the same direction, running westerly, till it meets the northeasterly side of the bridge of the Boston and Lowell Railroad corporation, at a point sixty-five feet from the south stone abutment of said bridge; thence straight to the westerly side of Canal Bridge, at the southerly side of the pier wharf on which the gymnasium stood, being at a point one hundred and six feet southerly from the southerly side of the draw in said Canal Bridge; thence to the northeasterly corner of the solid wharf, belonging to the Charles River Wharf Company, and by the end of said wharf to the westerly corner of the same;<sup>1</sup> thence to a ledge of rocks,<sup>2</sup> off against the end of Taylor's Wharf at a point one hundred and eighty feet from said wharf, and four hundred and sixty-nine feet from a brick house standing at the corner on the northwesterly side of Brighton Street, and northerly side of Poplar Street; thence straight to the southwest corner of the Pier Wharf situate on the southerly side of West Boston Bridge, crossing the westerly side of said bridge at a point fourteen feet easterly from the draw in said bridge, and one hundred and eighty-eight feet westerly from a brick building standing at the corner on the easterly side of Charles Street and southerly side of Cambridge Street;<sup>3</sup> thence, the line is straight, in a direction to a point on

See stat. 1860,  
c. 176, on p. 270,  
§ 52.

Altered, see  
post, p. 255, § 26.

<sup>1</sup> Not now known as Charles River Wharf Company's wharf, but forms a part of the solid filling between Canal Bridge and Vinal's Wharf. The northeasterly corner referred to in the text, is a point on the present wall one hundred thirty-four feet seven inches from Canal Bridge, and the westerly corner is a point on said wall four hundred fifty-seven feet six inches from said bridge, measuring in the direction of said wall as now built.

<sup>2</sup> The northerly corner of Taylor's Wharf is to be taken for this point. 1860, c. 176. See *post*, p. 270, § 52.

<sup>3</sup> So much of this line as lies between the point in the "ledge of rocks off against the end of Taylor's Wharf," and the northwesterly corner of the city's Jail Wharf, was altered by act of 1860, 176. See *post*, p. 270, § 52. West Boston Bridge has been rebuilt and widened, and the location of the draw changed. The distance from the brick building standing at the corner of Charles Street

1840, 35, § 3.

the northerly side of the Boston and Roxbury Milldam, which point is eight hundred feet westerly from a brick building standing at the corner, on the easterly side of Charles Street and northerly side of Beacon Street, and one hundred and twenty-five feet westerly from the sea-wall at the easterly end of said milldam, and keeping in that direction till it intersects a line drawn parallel with, and two hundred feet from the northerly side of said dam;<sup>1</sup> thence westerly by said parallel line to the west end of said dam.

Lines on the  
Charlestown  
side of the  
harbor.  
1840, 35, § 4.

22. The line on the Charlestown side of the harbor begins at the southwest corner of the most westerly navy yard wharf in Charlestown, and running southwesterly, about one thousand six hundred and fifteen feet, to a timber pier of Charles River Bridge, which is three hundred and forty feet northerly from the draw in said bridge, and five hundred and ninety-two feet southerly from the southerly corner of a brick store on the northerly side of Water Street, at the junction of Main and Water Streets; thence on the same course to a point one hundred feet from the west side of Charles River Bridge, being in all one thousand seven hundred and thirty-five feet; thence northwesterly, about five hundred and twenty feet, crossing Warren Bridge, to the southwest corner of Thompson's Wharf, which corner is three hundred and thirty-eight feet from the southwest rail of the Charlestown Branch Railroad, and two hundred and seventy-eight feet from the sea-wall built by the Charlestown Land and Wharf Company; thence northwesterly, about five hundred and fifteen feet to the southeast corner of the wharf belonging to the Charlestown Land and Wharf Company, nearly opposite a passageway: thence northwesterly, about nine hundred and twenty feet, to a point in range with the east side of Fifth Street, being two hun-

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referred to, is one hundred eighty-nine feet two inches, measuring on the southerly line of said bridge as now built. The Pier Wharf, referred to in the text, now forms a part of the solid filling on the southerly side of said bridge, and the southwesterly corner referred to is a point in the said line distant eighty-five feet seven and one quarter inches from the southerly line of the bridge as now built.

<sup>1</sup> This part of the line was altered by stat. 1841, c. 60, and further altered by stat. 1850, c. 317. See §§ 26, 37, *post*, pp. 255, 262.

dred and eighty-four feet westerly from the sea-wall, measured on a line in range with said east side of Fifth Street; thence northwesterly, about five hundred and ninety feet, to a point fifteen feet from the south corner of wharf B, occupied by Charles Gould as a lime wharf, which point is three hundred and twelve feet from the sea-wall of the Charlestown Land and Wharf Company; thence northwesterly, about four hundred feet, to Prison Point Bridge, at a point which is eighty-six feet easterly from the east side of the draw in said bridge, and three hundred twenty-three feet southwesterly from the sea-wall measuring along the southeasterly side of said Prison Point Bridge.

23. The line on the East Boston side of the harbor commences at a point on the East Boston flats, on the northerly side of Bird Island channel, which point is denoted by the letter A on the plan of the harbor, and is situated on a line in range with the southerly side of Sumner Street, in said East Boston, and at the distance of eight hundred feet from the intersection of the east side of Jeffries Street and southerly side of Sumner Street; thence running westerly from said point, about one thousand feet to the point B situated in the division line between the upland lots numbered sixty and sixty-one, produced five hundred and seventy-five feet from the south side of Marginal Street, or about eight hundred and eighty feet in said line from the south side of Sumner Street; thence again westerly, on a straight line about two thousand feet to the point C, in range with the division line between the water lots of Peter Dunbar and Fettyplace and Lamson,<sup>1</sup> at the distance of one thousand one hundred feet from the southwesterly side of Marginal Street, and one thousand six hundred and ninety feet from the southwesterly side of Sumner Street; thence northwesterly, by a line parallel to the southwesterly side of Sumner Street, nine hundred and eighty feet to the point D, in the range of the easterly boundary line<sup>2</sup> of the water lot of the Eastern Railroad Company, and one

Lines on East  
Boston side of  
the harbor.  
Ibid. § 5.

<sup>1</sup> The Dunbar and Fettyplace and Lamson lots are now included in the Grand Junction Railroad wharves. The division line between them was at right angles to Marginal Street, and two hundred and forty feet southeasterly from Cottage Street.

<sup>2</sup> The easterly boundary line of the Eastern Railroad Company's lot is at

Lines on East  
Boston side of  
the harbor.  
1840, 35, § 5.

thousand six hundred and ninety feet from Sumner Street ; thence the line runs straight, a northerly course, about two thousand six hundred feet, to the point E, situated at the distance of five hundred and ten feet from the point F, which point F is situated in the division line between the water lots of Samuel Aspinwall and Pratt and Cushing ;<sup>1</sup> the said point F being one hundred and seventy feet northeasterly from the southwesterly side of Sumner Street, in the northwesterly side of a street forty feet wide,<sup>2</sup> on which street said Samuel Aspinwall and Pratt and Cushing are bounded southeasterly ; the line from E to F, (being five hundred and ten feet in length,) makes a right angle with the line D E ; from the point E the line is an arc of a circle, described from the centre F, with a radius of five hundred and ten feet, to the point G in the division line between the water lots of said Aspinwall and Pratt and Cushing ; thence from the point G the line runs straight four hundred and seventy-eight feet to the point H in the southwesterly division line of the water lot of the East Boston Timber Company,<sup>3</sup> and in the range line of the northeast side of Maverick Street, at the distance of seven hundred and fifty-six feet from the west side of Border Street. From the point H the line continues straight about five hundred and seventy feet, to the point I, in the northerly division line of flats or water lots of the East Boston Timber Company,<sup>4</sup> at the distance of eight hundred and forty-five feet from the west side of Border Street. From the point I the line continues northerly, a straight course, about three thousand three hundred feet to the point K, fixed at the distance of one thousand one hundred and seventy feet from the intersection of the easterly side of Meridian Street, and southerly side of Eagle Street, measured on a right line, running northwesterly from said intersection at an angle

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right angles to Marginal Street, and thirty feet northwestwardly from the southeasterly line of Orleans Street.

<sup>1</sup> The Pratt and Cushing lot now belongs to the heirs of Snelling.

<sup>2</sup> Now called New Street, and that part referred to in the text as being "forty" feet wide has been widened on the southeasterly side to eighty feet.

<sup>3</sup> Now John Clifton's.

<sup>4</sup> Now belonging to the East Boston Sectional and Dry Dock Company.

of one hundred and forty-six degrees and thirty-nine minutes 1840, 35, § 5.  
with said Eagle Street.<sup>1</sup>

24. The same act prescribed that no wharf, pier, building, or No wharf, &c.,  
to be extended  
beyond the  
line, nor fur-  
ther towards  
the line, with-  
out, &c.  
Ibid. § 6.  
7 Cush. 53.  
incumbrance of any kind should ever be extended beyond the  
said line into or over the tide water in said harbor, nor should  
any wharf or pier which was then erected on the inner side of  
said line, extend further towards the said line than such wharf  
or pier then stood, or than the same might have been lawfully  
enlarged or extended before the passing of the said act, without  
leave being first obtained from the legislature.

25. Every person or corporation offending against the pro- Penalty.  
1840, 35, § 7.  
visions of sections fifteen, sixteen, twenty-one, twenty-two,  
twenty-three, and twenty-four, shall be deemed guilty of a mis-  
demeanor, and shall be liable to be prosecuted therefor by in-  
dictment or information, in any court of competent jurisdiction ;  
and, on conviction, shall be punished by a fine not less than one  
thousand dollars nor more than five thousand dollars for every  
offence ; and any erection or obstruction which shall be made  
contrary to the provisions and intent of the said sections, shall Erection may  
be abated as a  
nuisance.  
Ibid.  
be liable to be removed and abated as a public nuisance, in the  
manner heretofore provided for the removal and abatement of  
nuisances on the public highway.

26. By an act passed March 6, 1841, the line of that part of Alteration of  
line between  
West Boston  
Bridge and the  
Boston and  
Roxbury Mill-  
dam.  
1841, 60.  
See ante, p. 251.  
1840, 35, § 3.  
the harbor of Boston lying between West Boston Bridge and the  
Boston and Roxbury Milldam, which was established by the act  
of March seventeenth, one thousand eight hundred and forty,  
was altered in part, and ordered thereafter to run as follows :  
that is to say, beginning at the southwesterly corner of the Pier  
Wharf situate on the southerly side of West Boston Bridge, and  
thence running southerly to a point in the line heretofore estab-  
lished by the act last aforesaid ; which point is eight hundred  
feet distant from the corner of said pier ; and from the said last  
mentioned point, running again southerly, but more westerly, in  
a direction to a point on the northerly side of said Boston and  
Roxbury Milldam, which point is ten hundred and eighty-six

<sup>1</sup> For additional lines from East Boston towards Breed's Island, see stat. 1856, c. 293, § 5, *post*, § 49, p. 268.

1840, 35, § 3.  
1841, 60.

feet distant from a brick building standing at the corner on the easterly side of Charles Street and northerly side of Beacon Street, until it comes to a line running parallel with said mill-dam, and two hundred feet distant from the northerly side thereof, then uniting with a line established by said last-mentioned act.<sup>1</sup>

Additional  
lines estab-  
lished.  
1847, 278, § 1.  
7 Cush. 53.

27. By an act passed April 26, 1847, the lines described in the three following sections were established as lines of the channel of the harbor of Boston beyond which no wharf or pier should ever be extended into and over the tide water of the commonwealth.

First line.  
1847, 278, § 2.

28. The first line is drawn from the southerly end of the island built by the Boston and Maine Railroad Company, between the channels of Charles River and Miller's River to the southerly corner of the northwesterly abutment of Canal (or Craigie's) Bridge. The second line is drawn straight from the face of the said abutment of Canal Bridge through a point on the northerly side of West Boston Bridge, two thousand feet from the easterly side of the draw in said bridge to a point two thousand feet northerly from the harbor line heretofore established on the northerly side of the Boston and Roxbury Milldam. The next line is drawn from this last point westerly, parallel to said mill-dam and two thousand feet from said harbor line, to the northern shore of Charles River near its mouth.

Second line.  
Ibid.

Third line.  
Ibid.

Fourth line.  
Ibid. § 3.  
7 Cush. 53.

29. The fourth line is in Miller's River, and is drawn from the south corner of the aforesaid Boston and Maine Railroad Company's island northerly, along the westerly side of the same, and thence in the same straight line to the northerly side of the old channel. The fifth line is drawn from the point where the fourth line meets the northerly side of the said channel, northwesterly, northerly, and northeasterly, along the sea-wall recently built by the Charlestown Branch Railroad Company, to the westerly projection of the State Prison Yard. The sixth line is parallel to the fourth line, and two hundred feet westerly. It

Fifth line.  
Ibid.

Sixth line.  
Ibid.

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<sup>1</sup>This part of the line was further altered by stat. 1850, c. 317. See pp. 262, 263, *post*, §§ 37-40.

extends from the channel of Charles River to the south side of the channel of Miller's River. The seventh line is drawn from the north end of the sixth, as just described, to a point on the north side of Prison Point Bridge, five hundred feet westerly of the centre line of the Boston and Maine Railroad. The eighth line is drawn from the northern extremity of the seventh to a point opposite the west end of the Fitchburg Railroad Bridge, and distant from the same three hundred feet. The ninth line is drawn from the last-mentioned point to the northerly corner of the southeasterly abutment of the Boston and Lowell Railroad Bridge over Miller's River.

30. The tenth line is in South Bay, and is drawn from a point on the south side of the South Free Bridge,<sup>1</sup> (one hundred and fifty feet southeasterly of the southeasterly side of the draw,) in a southerly direction, parallel to the Dorchester Turnpike three thousand feet.<sup>2</sup> The eleventh line is on the westerly side of the channel, and is drawn from the southerly corner of Miller and Nason's Wharf, southerly in a direction at right angles with the South Bridge, across the same, to a point twelve hundred and fifty feet distant therefrom. The twelfth line is drawn from the last-mentioned point to the westerly side of the artificial channel of Roxbury Creek, one thousand feet southeasterly from Harrison Avenue, opposite the South Burying Ground.<sup>3</sup>

The said lines, thus described, are the lines reported by commissioners under the resolve passed the twenty-second day of March, in the year one thousand eight hundred and forty-five, "authorizing the survey of South Bay, Charles and Mystic

1847, 278, § 3.

Seventh line.

Ibid.

Eighth line.

Ibid.

Ninth line.

Ibid.

Tenth line.

Ibid. § 4.

7 Cush. 53.

Eleventh line.

1847, 278, § 4.

Twelfth line.

Ibid.

Being the lines reported by commissioners.

See Resolves 1845, c. 109.

<sup>1</sup> Now called Dover Street Bridge.

<sup>2</sup> By stat. of 1855, c. 310, the tenth line was to be changed on certain conditions in said act expressed, if complied with within one year. The conditions not having been complied with within the term mentioned, by stat. of 1856, c. 297, the time was extended two years; but said conditions were never complied with, and the act became void. But in "An act concerning the Old Colony and Fall River Railroad Company," passed April 3, 1861, (1861, c. 137, § 7, see *post*. p. 271, § 53,) the tenth line as in the text was altered on conditions therein expressed, and which have been complied with by said company.

<sup>3</sup> For additional lines in South Bay, see stat. 1856, c. 293, § 2, on page 263, *post*.

1847, 278, § 4.

Rivers," and by said commissioners drawn and defined on plans by them taken and deposited in the library of the commonwealth.

No wharf, &c.,  
to be extended  
beyond said  
lines, or further  
towards them.  
Ibid. § 5.  
7 Cush. 53

31. It was prescribed by the said act that no wharf, pier, building, or incumbrance of any kind should thereafter be extended beyond the said lines or either of them, into or over the tide water in said harbor; nor should any wharf or pier which was then erected on the inner side of either of said lines be extended farther towards the said line than such wharf or pier then stood, or than the same might have been lawfully enlarged or extended before the passing of the said act, without leave being first obtained from the legislature.

Penalties.  
1847, 278, § 6.

32. Every person offending against the provisions of the five preceding sections shall be deemed guilty of a misdemeanor, and shall be liable to be prosecuted therefor by indictment or information, in any court of competent jurisdiction; and on conviction shall be punished by a fine not less than one thousand dollars nor more than five thousand dollars, for every offence;

Erections to be  
abated as nuisances.  
Ibid.

and any erection or obstruction which shall be made contrary to the provisions and intent of the said last-mentioned sections shall be liable to be removed and abated as a public nuisance, in the manner heretofore provided for the removal and abatement of nuisances on the public highway.

Lines in Chelsea Creek  
established.  
1849, 204, § 1.

33. In that part of the harbor of Boston lying between East Boston and Chelsea, and known as Chelsea Creek, the lines described in the following section, which are the same lines reported by the commissioners authorized by a resolve of the general court passed on the tenth day of May in the year one thousand eight hundred and forty-eight, "to define, upon a plan or plans, such lines," in said part of said harbor, "as they shall think expedient to establish, beyond which no wharves or other structure shall be extended into and over the tide waters of the commonwealth," and by them drawn and defined upon certain plans taken by them, and deposited in the state library, were established by an act passed on the second day of May, one thousand eight hundred and forty-nine, as the lines beyond which no wharf or pier should ever thereafter be extended into or over the tide water of said part of said harbor.

See Resolves,  
1848, c. 84.

34. The line on the East Boston side of said creek, commences at a point on the westerly side of East Boston, which point is the northerly terminus of the commissioners' line, heretofore established around East Boston, said point being denoted by the letter A on said plans; thence running northeasterly from said point, about five hundred and thirty-eight feet, to a point marked B, fixed at the distance of nine hundred and fifty-six feet from the intersection of the easterly line of Meridian Street and the northerly line of Condor Street, measuring, in a right line, northwesterly from said intersection, at an angle of one hundred and forty degrees with the northerly side of said Condor Street; thence again northeasterly, about nine hundred and ninety-six feet, to a point marked C, situate eleven hundred and forty-seven feet from the northerly side of Condor Street, measuring northerly, and at right angles thereto, and from a point one hundred and eighteen feet and nine inches easterly from the intersection of the easterly line of Meridian Street, and northerly line of Condor Street; thence easterly about four hundred and five feet to a point marked D, situate one thousand and seventy-two feet from the northerly side of Condor Street, measuring northerly, and at right angles thereto, from a point in said side of said street nineteen hundred and twenty feet westerly from the intersection therewith of the easterly side of Knox Street; thence again easterly, about seven hundred and fifty-three feet, to a point marked E, situate eight hundred and forty-two feet from the northerly side of Condor Street, measuring northerly, and at right angles thereto, from a point in said side of said street twelve hundred feet westerly from the intersection therewith of the easterly side of Knox Street; thence again easterly, about thirteen hundred and fifteen feet to a point marked F, being the northwesterly corner of the westerly pier of the Glendon Rolling Mills Company's Wharf, said corner being at the distance of eight hundred and sixty feet from the northerly side of Eagle Street, measuring northerly, and at right angles thereto; thence again easterly, by the face of the two piers of said wharf, about two hundred and seventy-two feet, to the point marked G, being the northeasterly corner of the easterly pier of said wharf;

Line on East  
Boston side.  
1849, 204, § 2.

Line on East  
Boston side.  
1849, 204, § 2.

thence again easterly, about four hundred and sixty feet to a point marked H, situate eight hundred and fourteen feet from the northerly side of Eagle Street, measuring northerly, and at right angles thereto, from a point in said side of said street, four hundred and sixty feet westerly from the intersection therewith of the westerly side of Chelsea Street; thence northeasterly about four hundred and fifteen feet to a point marked I, situate six hundred and eighty-five feet from the westerly side of Chelsea Street, measuring northwesterly, and at right angles thereto, from a point in said side of said street, six hundred and eighty-five feet northerly from the intersection therewith of the northerly side of Eagle Street; thence northeasterly again, about one thousand and fifteen feet, to a point marked K, on the west side of Chelsea Free Bridge, said point being one hundred and fifty-eight feet northerly from the face of the south abutment of said bridge.<sup>1</sup>

Line on Chelsea  
side.  
Ibid.

The line on the Chelsea side of said creek commences at a point on the west side of Chelsea Free Bridge, situate two hundred and two feet southerly from the intersection of the same with the southerly line of Marginal Street, in the town of Chelsea, said point being marked L, on the plan; thence running southwesterly about nine hundred and fifty-five feet to a point marked M, situate three hundred and six feet from the south line of Marginal Street, measuring southerly, and at right angles thereto, from a point in said side of said street, fifteen feet easterly from the first bend therein, west of Chelsea Free Bridge aforesaid; thence again, southwesterly, about three hundred and seventeen feet to a point marked N, situate three hundred and ninety-four feet from the southerly side of Marginal Street, measuring southerly, and at right angles thereto, from a point in said side of said street, sixty feet westerly from the aforesaid bend therein; thence westerly, about three hundred and eighty-six feet, to a point marked O, situate four hundred and fifty-five feet from the southerly side of Marginal Street, meas-

<sup>1</sup> The abutment referred to is two hundred and eighty-six feet from the intersection of the northwesterly line of the straight part of Chelsea Street and the southwesterly line of the bridge.

uring southerly and at right angles thereto, from a point in said side of said street, four hundred and forty feet westerly from the aforementioned bend therein; thence again westerly, about two hundred and ten feet to a point marked P, being the southwesterly corner of the Glendon Rolling Mills Company's Pier on the Chelsea Flats, situate in the division line of the Winnisimmet Company's water lots, numbered 21 and 22, and four hundred and sixty-five feet from the southerly side of Marginal Street, measuring southerly and at right angles thereto; thence again westerly, about thirteen hundred and thirty feet to a point marked Q, situate in the division line between Austin and Caruth's wharves, and two hundred and forty-eight feet from the southerly side of Marginal Street, measuring southerly and at right angles thereto; thence again, westerly, about seven hundred and forty feet to a point marked R, situate in the line of the southerly side of Hawes's Wharf continued and three hundred feet from the southerly side of Marginal Street, measuring southerly and at right angles thereto; thence again westerly, about six hundred and thirty-three feet to a point marked S, situate four hundred and five feet from the southerly side of Marginal Street, measuring southerly, in the line of the easterly side of the Winnisimmet Company's solid wharf; thence southwesterly about four hundred and eighty-five feet to a point marked T, being the southeasterly corner of the small pier of the Winnisimmet Company, on the easterly side of their ferry slip; thence again southwesterly, about sixty feet to a point marked U, being the southerly extremity of the easterly line of spring piling of the aforesaid ferry slip; thence westerly across the mouth of said slip about one hundred and twelve feet to a point marked V, being the southerly extremity of the westerly line of the spring piling of said ferry slip, and situate two hundred and twenty feet southwesterly from the intersection of the Winnisimmet Company's existing sea-wall, on the westerly side of the aforesaid ferry slip, with the continuation of the west side of Winnisimmet Street, measuring in the line of said continuation; thence southwesterly about eight hundred feet to a dolphin driven into the flats and marked W, situate eight hundred feet from the easterly

Line on  
Chelsea side.  
1849, 204, § 2.

1849, 204, § 2.

side of Chelsea Toll Bridge, measuring easterly, and at right angles thereto, from a point in said side of said bridge four hundred and ten feet south of the north abutment of said bridge.<sup>1</sup>

No wharf, &c., shall be extended beyond said lines. Ibid. § 3. Penalty. Ibid. § 4.

35. The same act prescribed that no wharf, pier, or structure of any kind, should ever thereafter be extended beyond said lines, into or over the tide water in said part of said harbor.

Erection may be abated as a nuisance. Ibid.

36. Every person offending against the provisions of the three preceding sections shall be deemed guilty of a misdemeanor, and shall be liable to be prosecuted therefor by indictment or information, in any court of competent jurisdiction, and on conviction shall be punished by a fine not less than one hundred dollars nor more than one thousand dollars, for every offence; and any erection or obstruction which shall be made contrary to the provisions and intent of this act shall be liable to be removed and abated as a public nuisance, in the manner by law provided for the removal and abatement of nuisances on the public highways.

Line between West Boston Bridge and Boston and Roxbury Milldam further altered. 1850, 317, § 1. See *ante*, pp. 250, 251, 255, and 256.

37. By an act passed May 3, 1850, the line of that part of the harbor of Boston lying between West Boston Bridge and the Boston and Roxbury Milldam, which was established by an act passed on the seventeenth day of March, one thousand eight hundred and forty, and altered by an act passed on the sixth day of March, one thousand eight hundred and forty-one, was further altered and directed after May 3, 1850, to run as follows, that is to say: Beginning at the southwesterly corner of the Pier Wharf<sup>2</sup> situate on the southerly side of West Boston Bridge; thence running southwesterly, in a straight line, in a direction to a point on the northerly side of said Boston and Roxbury Milldam, which point is ten hundred and eighty-six feet distant from a brick building standing at the corner on the easterly side of Charles Street and northerly side of Beacon Street, until it comes to a line running parallel with said mill-

<sup>1</sup> For additional lines on the Chelsea side extending westerly up the Mystic River to Malden Bridge, see stat. 1856, c. 293, § 3, on pp. 265, 266.

<sup>2</sup> Pier Wharf has been removed, and the point of beginning in the text is a point in the commissioners' line as established in 1840, eighty-five feet and seven and one quarter inches southerly of the present southerly side of West Boston Bridge.

dam, and two hundred feet distant from the northerly side thereof; then uniting with a line established by said act passed on the seventeenth day of March, one thousand eight hundred and forty. 1850, 317, § 1.  
See 1840, c. 35.

38. By the same act it was prescribed that no wharf, pier, building, or incumbrance of any kind should, after said third day of May, eighteen hundred and fifty, be extended beyond said line established in the preceding section, into or over the tide water in said harbor. No wharf, &c.,  
to be extended  
beyond said  
line.  
1850, 317, § 2.

39. The proprietors of the wharves and flats lying between West Boston Bridge and the Boston and Roxbury Milldam were thereby authorized to extend their wharves and the lines of their respective flats to the said last-mentioned line, in a direction at right<sup>1</sup> angles thereto; *provided* that no person's legal rights shall be infringed thereby. Proprietors au-  
thorized to ex-  
tend wharves,  
&c., to said line,  
provided, &c.  
Ibid. § 3.  
See *post*, p. 269  
§ 51.  
1860, c. 137, § 1.

40. The three preceding sections are to take effect only if and on condition that the proprietors of said wharves and flats shall cause a good and substantial sea-wall to be built and maintained on said last-mentioned line through its whole length. Not to take ef-  
fect unless a  
sea-wall is built.  
1850, 317, § 4.  
See 1860, 137,  
*post*, pp. 269, 270.

41. By an act passed June 6, 1856, the following additional lines in South Bay were established, viz: The said lines begin at a point denoted by letter A, on plan number two of the harbor commissioners of eighteen hundred and fifty-four, and is in the mouth of Roxbury Canal, distant one hundred and thirty feet southeastwardly from the twelfth line of the commissioners of eighteen hundred and forty-seven, measuring in the direction of a line drawn from a point in the said twelfth line distant one hundred and twenty feet northeastwardly from the southwesterly termination thereof, (the said termination being understood to be a point distant one thousand feet from the southeasterly line of Harrison Avenue, measuring at right angles with the said southeasterly line from a point therein lying in the direction of the southwesterly line of the South Burying Ground extended south-

<sup>1</sup> By stat. 1860, c. 137, § 1, which see on p. 269, *post*, the proprietors were authorized to extend their wharves and the lines of their flats in the direction in which said lines of their respective flats were originally established between said proprietors.

Additional lines  
in South Bay.  
1856, 293, § 2.

eastwardly,) to a point on the southeasterly rail of the Boston and New York Central Railroad Bridge, distant twenty-six hundred and twenty-eight feet southwestwardly from the southwest-erly rail of the Old Colony Railroad Bridge near Dorchester Av-  
 enue measuring on the said southeasterly rail; thence running southeastwardly thirteen hundred feet, in the same direction as the line of one hundred and thirty feet above described, to the point B, said point being at or near the northerly end of F. A. Heath and Company's<sup>1</sup> sea-wall; thence southeastwardly straight to the point C, on the most northeasterly corner of said Heath and Company's Wharf; thence along the present line of said wharf to the point D, on the most southeasterly corner of the same; thence in the direction of a line drawn from the last-mentioned corner to a point on the southeasterly rail of the said Boston and New York Central Railroad Bridge, which point is distant forty-nine hundred and eighty-seven feet southwestwardly from the southwesterly rail of the Old Colony Railroad Bridge above mentioned, measuring on the said southeasterly rail to the point E, which is situated at the intersection of this line with a line crossing the aforesaid Boston and New York Central Rail-  
 road Bridge, and passing through a point on the southeasterly rail of the same, distant forty-six hundred and seventy-two feet southwestwardly from the southwesterly rail of the Old Colony Railroad Bridge above mentioned, measuring on the said south-  
 easterly rail and making an angle of seventy-eight degrees and forty-five minutes, (taken from a northeasterly to an easterly direction,) with the said Boston and New York Central Railroad Bridge; thence eastwardly in the direction of the line last de-  
 scribed, eleven hundred and seventy feet to the point F; thence northwardly to the point G, it being the southerly termination of the tenth line of the commissioners of eighteen hundred and  
 forty-seven; *provided*, that nothing contained in this act shall affect or take away the legal rights of any person, unless a reasonable compensation shall have been previously made or provided therefor.

Proviso.  
Ibid.

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<sup>1</sup> Now belonging to Charles Heath.

42. By the same act it was prescribed that no wharf, pier, or building, or incumbrance of any kind, should ever thereafter be extended beyond the said lines into or over the tide water in said harbor. Also, that no person should thereafter enlarge or extend any wharf or pier which was then erected on the inner side of the said lines further towards the said lines than such wharf or pier then stood, or than the same might have been lawfully enlarged or extended before the passing of said act, without leave first obtained in due form of law.

No wharf, &c.,  
to be extended  
beyond said  
line.  
1856, 293, § 6.  
Present  
wharves, &c.,  
not to be ex-  
tended without  
leave, &c.  
Ibid. § 7.

43. By the same act it was further prescribed that no person should thereafter build or extend any wharf, pier, or other structure, in any part of the harbor of Boston, beyond the riparian lines, unless such person shall excavate from the flats in said harbor adjacent, between high and low water mark, a quantity of material equal in bulk to the quantity of water displaced by said structure, unless by authority of the legislature.

Excavations to  
be made when  
new structures  
are extended,  
&c.  
Ibid. § 8.

44. It was further provided in said act that every person offending against the provisions of the same should be deemed guilty of a misdemeanor, and should be liable to be prosecuted therefor by indictment or information, in any court of competent jurisdiction, and on conviction should be punished by a fine not less than one thousand dollars nor more than five thousand dollars, for every offence; and that any erection or obstruction which should be made contrary to the provisions and intent of said act, should be liable to be removed and abated as a public nuisance in the manner heretofore provided for the removal and abatement of nuisances on public highways.

Persons offend-  
ing to be  
deemed guilty  
of misde-  
meanor, &c.  
Ibid. § 9.  
Penalty, &c.  
Ibid.

45. By an act passed June 6, 1856, the lines in Mystic River are thus described and established, viz: Beginning at a point denoted by letter A, on plan number three of the harbor commissioners of eighteen hundred and fifty-four, which is on the northwesterly side of Chelsea Bridge, distant four hundred and sixty feet northeastwardly from the northeasterly draw in said bridge; thence the line runs in a southeasterly direction, making an angle of eighty-seven degrees and thirty minutes, (taken from a southwesterly to a southeasterly direction,) with

Lines in Mys-  
tic River.  
Ibid. § 3.

Line on Chel-  
sea side south-  
east of Chelsea  
Bridge.  
Ibid. § 3.

See ante, p. 260.

1856, 293, § 3.

Lines on Chelsea side between the Bridge and Island End River.  
Ibid.

said bridge to the point B, situated at the intersection of this line with the commissioners' line of eighteen hundred and forty-nine. Beginning again at the point A, first mentioned, the line runs in a westerly direction two thousand and twenty feet to the point C, making an angle of sixty-two degrees and fifteen minutes, (taken from a southwesterly to a westerly direction,) with said bridge; thence northwestwardly four hundred and thirty feet to the point D, near the easterly side of the mouth of Island End River, making an angle of one hundred and forty-five degrees and thirty minutes, (taken from an easterly to a northwesterly direction,) with the line last described.

Lines between Malden Bridge and Island End River.  
Ibid.

Then beginning at the point E, on the southeasterly side of Malden Bridge, distant six hundred and fifty feet northeastwardly from the draw in said bridge, the line runs in an easterly direction twenty-five hundred feet to the point F, making an angle of eighty-one degrees and thirty minutes, (taken from a northeasterly to a southeasterly direction,) with said bridge; thence eastwardly sixteen hundred and fifty feet to the point G, near the westerly side of the mouth of Island End River, making an angle of one hundred fifty-six degrees and thirty minutes, (taken from a northwesterly to an easterly direction,) with the line last described.

Line on the southwest side of Mystic River southeast of Malden Bridge.  
1856, 293, § 3.

The line on the southwesterly side of the channel begins at the point H, on the most easterly corner of the wall of Tuft's Mill Pond, said point being the beginning of the line of solid structure, as described in chapter one hundred and five of the Acts of eighteen hundred and fifty-two, authorizing the city of Charlestown and others to fill up certain flats in Mystic River; thence the line runs northwestwardly along the northeasterly side of the said wall of Tuft's Mill Pond to the point I, on the southeasterly side of Malden Bridge, said point being at the intersection of said wall and bridge; *providing*, that the proprietors bounding on said line from H to I may extend piers from said line to the channel.

Proviso.

Wharf extensions, excavations, offences,

46. For provisions as to the extension of new wharves, piers, &c., and of existing wharves, piers, &c., also as to excavations

to be made in case of new structures being extended, and penalties for offending against said provisions, see stat. 1856, c. 293, §§ 6, 7, 8, and 9; being §§ 42, 43, and 44, *ante*.

47. By an act passed June 6, 1856, the following lines in Dorchester Bay and Neponset River were established as lines beyond which no wharf or pier should ever thereafter be extended into and over the tide waters of the commonwealth, viz: The line from South Boston Point, through Dorchester Bay and Neponset River, commences at the termination of the line of the commissioners of eighteen hundred and fifty-one, denoted by letter A, on plan number four of the harbor commissioners of eighteen hundred and fifty-four, and is situated in the northerly line of Fourth Street extended eastwardly and fourteen hundred feet from the easterly line of P Street; thence the line runs in a southerly direction, parallel with P Street, seven hundred feet to the point B; thence southwestwardly to the point C, in the westerly line of P Street extended southwardly, and five hundred and thirty feet from the southerly line of Sixth Street; thence southwestwardly again to the point D, in the easterly line of M Street extended southwardly, and thirteen hundred feet from the southerly line of Eighth Street; thence westwardly parallel with Eighth Street to the point E, in the easterly line of Old Harbor Street extended southwardly; thence southwardly fourteen hundred feet to the point F, in the easterly line of Old Harbor Street extended southwardly; thence eastwardly, making an angle of one hundred and four degrees, (taken from a northerly to an easterly direction,) with the line last described to the point G, in the easterly line of M Street extended southwardly; thence thirty-two hundred feet to the point H, in the easterly line of M Street extended southwardly; thence southwestwardly thirty-eight hundred and fifty feet, making an angle of one hundred and twenty-four degrees, (taken from a northerly to a southwestwardly direction,) with the line last described to the point I; thence westwardly to the point J, on the easterly side of the Old Colony Railroad Bridge, near Glover's Tide Mill Pond, distant four hundred and thirty feet northwardly from the draw in said bridge; then southwardly, along the easterly side of said bridge six hun-

and penalties,  
reference to  
provisions.

Lines in Dor-  
chester Bay and  
Neponset  
River.  
1856, 293, § 4.

Lines in Dor-  
chester Bay and  
Neponset  
River.  
1856, 293, § 4.

dred feet to the point K ; thence southeastwardly to the point L, distant two hundred feet from the northeasterly corner of Ranstead Dearborn and Company's Wharf (as at present built), measuring at right angles with the northeasterly end of said wharf ; thence southwardly to the point M, distant thirteen hundred and fifty feet from the northeasterly rail of the Old Colony Railroad, measuring at right angles therewith, from a point distant four thousand feet northwestwardly from the draw in their bridge over Neponset River ; thence southeastwardly to the point N, distant twelve hundred feet from said rail, measuring at right angles therewith, from a point distant thirty-three hundred feet northwestwardly from said draw ; thence southeastwardly again, to the point O, distant seventeen hundred and fifty feet from said rail, measuring at right angles therewith, from a point distant sixteen hundred feet northwestwardly from said draw ; thence southwardly to the point P, distant twelve hundred feet from said rail, measuring at right angles therewith, from a point distant three hundred feet northwestwardly from said draw ; thence southwestwardly to the point Q, on the southeasterly corner of James Jenkins's Wharf (as at present built) ; thence to the point R, on the southeasterly corner of William H. Chamberlain's Wharf (as at present built) ; thence along the southeasterly end of said Chamberlain's Wharf, and of Edward Preston's Wharf (as at present built), to the point S, on the easterly side of the Neponset Bridge.

Reference to  
provisions as  
to wharf  
extensions,  
excavations,  
offences, and  
penalties.

48. For provisions as to the extension of new wharves, piers, &c., and of existing wharves, piers, &c., also as to excavations to be made in case of new structures being built or extended, and the penalties for offending against said provisions, see stat. 1856, c. 293, §§ 6, 7, 8, and 9, being §§ 42, 43, and 44, *ante*.

Lines from  
East Boston  
towards  
Breed's Island.  
*Ibid.* § 5.

49. By an act passed June 6, 1856, the following lines between East Boston and Breed's Island were established as lines beyond which no wharf or pier should ever thereafter be extended into and over the tide waters of the commonwealth, viz : The line from East Boston in the direction of Breed's Island, commences at the termination of the line of the commissioners

of eighteen hundred and forty, denoted by the letter A, on the plan number one of the harbor commissioners of eighteen hundred and fifty-four, and is in the southwesterly line of Sumner Street extended southeastwardly, and eight hundred feet from the southeasterly line of Jeffries Street; thence the line runs easterly to a point in the northeasterly line of Everett Street, continued southeastwardly, and distant sixteen hundred and ten feet from the southeasterly line of Jeffries Street; thence the line runs northerly to a point in the line of the northeasterly side of Neptune Street continued southeastwardly, and distant fifteen hundred feet from the southeasterly line of Shirly Street; thence the line runs straight northeastwardly to the point B, on the southwesterly shore of Breed's Island, distant twelve hundred and fifty feet from the southeasterly line of Saratoga Street extended northeastwardly, measuring at right angles therewith, from a point distant thirteen hundred feet from the southwesterly line of Trumbull Street.

Lines from East  
Boston towards  
Breed's Island.  
1856 293, § 5

50. For provisions as to the extension of new wharves, piers, &c., and of existing wharves, piers, &c.; also as to excavations to be made in case of new structures being extended, and the penalties for offending against said provisions, see stat. 1856, c. 293, §§ 6, 7, 8, and 9; being §§ 42, 43, and 44, *ante*.

Reference to  
provisions as to  
wharf exten-  
sions, excava-  
tions, offences,  
and penalties.

51. By an act passed March 31, 1860, entitled "An act in addition to an act concerning the harbor of Boston," it is declared that so much of the third section of an act entitled "An act in addition to an act concerning the harbor of Boston," passed on the third day of May, in the year one thousand eight hundred and fifty, as provides that the proprietors of the wharves and flats, by said act authorized to be extended, shall extend said wharves and the lines of their respective flats in a direction at right angles to the line established by said act, is hereby repealed; and the proprietors of said wharves and flats are hereby authorized to extend their wharves and the lines of their respective flats to the line established by said act, in the directions in which said lines of their respective flats were originally established between said proprietors.

Act concerning  
flats between  
West Boston  
Bridge and the  
Milldam.  
1860, 137, § 1.  
Repeal of the  
provisions  
of former act.  
See § 39, *ante*.  
Proprietors'  
lines to be ex-  
tended in their  
original direc-  
tion.  
*Ibid*.

City of Boston may accept and lay out as public streets such parts of said flats as the proprietors may appropriate therefor. 1860, 137 § 2.

Also, that whenever the said proprietors lay out or appropriate for any street or streets any portion of the said flats or wharves, the city of Boston may at any time accept and lay out as and for a public street or streets the portion or portions of said flats or wharves by said proprietors so laid out and appropriated, or any part of the same, which portions, so accepted, shall thereupon and without any further act of the said proprietors, and without any compensation to them or any of them therefor, vest in the said city of Boston.

Sea-walls to be built within two years from March 31, 1860, under forfeitures, &c. Ibid. § 3.

Said act further prescribes that each and every one of the said proprietors of said flats, or of any part thereof, who, at the expiration of two years from the passage of this act, have failed or neglected to cause a good and substantial sea-wall to be built and maintained in front of his or their respective flats on the line established by said act, passed on the third day of May, in the year one thousand eight hundred and fifty, shall forfeit all rights acquired under said act last mentioned or under this act.

New line between Taylor's Wharf and city's Jail Wharf. 1860, 176. See § 21, *ante*, p. 251.

52. By an act passed April 4, 1860, entitled "An act concerning the harbor of Boston," so much of the commissioners' line established by the third section of chapter thirty-five of the Acts of the year eighteen hundred and forty, as lies between the point in the ledge of rocks off against the end of Taylor's Wharf, mentioned in said act, and the northwesterly corner of the city's Jail Wharf, shall be deemed and taken as commencing at the northwest corner of Taylor's Wharf, which point is five hundred and fourteen feet from the corner on the northwesterly side of Brighton Street and northerly side of Poplar Street; and thence running straight to the northwesterly corner of the city's wharf, situated west of the jail, which point is sixty-six feet westerly of Charles Street; and the same is hereby established as the line of the channel of the harbor of Boston between said two points, beyond which no wharf or pier shall ever hereafter be extended into and over the tide water of the commonwealth. This line is defined on a plan made by James Slade, city engineer of Boston, dated March thirtieth, eighteen hundred and sixty, and deposited in the state library.

53. By an act passed April 3, 1861, the line described in section first of "An act in addition to an act entitled An act concerning lines in Boston harbor," passed May seventh, eighteen hundred and fifty-five, was thereby established instead of the tenth line described and established in and by section fourth of the act passed April twenty-sixth, eighteen hundred and forty-seven,<sup>1</sup> entitled "An act concerning lines in Boston harbor," and is described as follows: that is to say, it shall begin at a point on the south side of the South Free Bridge<sup>2</sup> ninety-eight feet seven inches easterly from the easterly side of the draw in said bridge;<sup>3</sup> and thence be drawn in a southerly direction to the point where the tenth line as heretofore established by said act of April twenty-sixth, eighteen hundred and forty-seven, had its southerly termination, being the point denoted by the letter G, on plan of the harbor number two of the commissioners of eighteen hundred and fifty-four.

New "tenth line" in South Bay.  
1861, 137, § 7.  
1855, 310, § 1.  
1847, 278, § 4.  
See § 30, *ante*.

Description of line.  
1855, 310, § 1.

It was prescribed by the said act that the Old Colony and Fall River Railroad Company should be authorized and required, within two years from April third, eighteen hundred and sixty-one, to build on said line thereby established from the South Free Bridge, a solid stone wall, and also to remove any portion of a stone wall which projects beyond the line established.

Old Colony and Fall River Railroad Company to build wall and remove projections.  
1861, 137, § 7.

## HARBOR REGULATIONS.

54. No vessel which shall cast anchor in the harbor of Boston, between India Wharf and Gray's Wharf, shall anchor within five hundred feet of the line described in the second section of an act entitled "An act to preserve the harbor of Boston, and to prevent encroachments therein," passed on the nineteenth day of

No vessel to anchor except within certain limits.  
1847, 234, § 1.  
See p. 245, *ante*.

<sup>1</sup> In the act of 1861, c. 137, § 7, the act referred to in the text is erroneously described as an act "passed April 2, 1842," no act of that date relating to the subject-matter having been passed.

<sup>2</sup> Now called Dover Street Bridge.

<sup>3</sup> The bridge and draw have been rebuilt and changed since 1855, and the distance of the point of beginning of said tenth line from the easterly side of the present draw is ninety-six feet and six tenths, measuring on the southerly side of said bridge.

1847, 234, § 1.

See p. 247, *et seq.*, *ante*.

Exception.  
Penalty  
Ibid.

Trim of vessels  
at wharves.  
1847, 234, § 2.  
See 1848, c. 314,  
§ 3; also § 63,  
*post*, for addi-  
tional pro-  
visions.

Penalty.  
Ibid.

Penalty for  
throwing  
stones, &c.,  
into the  
harbor.  
1847, 234, § 3.  
See 1848, c. 314,  
§ 2; also,  
§ 62, *post*.

Regulation of  
warps and  
lines.  
1847, 234, § 4.

April, in the year one thousand eight hundred and thirty-seven, and no vessel which shall cast anchor between the easterly side of Lamson's Wharf and the easterly side of Tuttle's Wharf, at East Boston, shall anchor within five hundred feet of the line described in the fifth section of "An act concerning the harbor of Boston," passed the seventeenth day of March in the year one thousand eight hundred and forty, unless for the purpose of hauling in as soon as practicable, to some wharf in said harbor, or unless compelled to do so by reason of stress of weather, or unavoidable casualty; and, for every offence against either of the foregoing provisions in this section, after having been notified thereof by the harbor master who may be appointed as herein-after mentioned, or by any party aggrieved, the master, commander, or owners of such vessel shall be subject to a penalty not exceeding twenty-five dollars.

55. The master, commander, or owners of every vessel shall, as soon as practicable after having hauled to the end of any wharf that extends to the channel in said harbor, cause her lower yards to be cockbilled, and her jib-boom to be rigged in, so that the said jib-boom may not annoy any other vessel or vessels going in or out of the adjoining docks; and the lower yards and jib-boom shall be kept so arranged while such vessel lies at the end of the wharf as aforesaid, and until she is preparing immediately to leave her berth; and for every offence against any of the provisions in this section the master, commander, or owners, or either of them, of such vessel, shall be subject to a penalty not exceeding ten dollars.

56. No person shall throw or deposit in said harbor, or any part thereof, any stones, gravel, ballast, cinders, ashes, dirt, mud, or other substances which may in any respect tend to injure the navigation thereof; and whoever shall offend against the provisions of this section shall be subject to a penalty not exceeding fifty dollars.

57. No warp or line shall be passed across the mouth of any slip, for the purpose of hauling a vessel by said slip, before the vessel shall be within one hundred feet of said slip, if the owners or occupants thereof object, unless the harbor master,

who may be appointed as hereinafter mentioned, shall have decided it to be necessary; and for every offence against this provision the master, commander, or owners of such vessel shall be subjected to a penalty not exceeding five dollars.

58. The city council of the city of Boston may, if they shall deem it expedient, annually appoint, by concurrent ballot in each board, a harbor master for the port of Boston, who shall hold his office for one year, and until another shall be appointed in his place, or until he shall be removed by said city council; and before entering upon his office he shall give bond to the said city, with sufficient sureties, to the satisfaction of the mayor and aldermen, in the penal sum of two thousand dollars, conditioned for the faithful discharge of the duties of said office; and in case of the sickness or disability of the said harbor master he may appoint a deputy, subject to the approval of said mayor and aldermen, to perform his duties during such sickness or disability; and said harbor master shall be allowed and paid quarterly, out of the city treasury, such salary for his services as said city council shall from time to time establish.

59. It shall be the duty of the said harbor master to enforce the execution of the several provisions of this section and the five preceding sections, and of all other laws of the commonwealth relating in any way to said harbor; and to prosecute all violations of such laws and ordinances, and to take all lawful measures to prevent the doing of any act by which the flow of the tides, or the force, direction, or depth of the current into, out of, or through the said harbor may, in any degree, be injuriously affected. And said harbor master shall also have authority so to regulate the anchorage of vessels that, as far as may be practicable, ferry boats may pass unobstructed, and the channel shall be kept clear from the wharves to Castle Island.

60. All the several penalties mentioned in the six preceding sections may be recovered by complaint before the police court of the city of Boston, or by indictment, for the use of the said city.

61. The harbor master authorized to be appointed, by section fifty-eight, shall have authority to regulate the anchorage of all

1847, 234, § 4.  
Penalty.  
Ibid.

City Council  
may appoint a  
harbor master.  
1847, 234, § 5.  
See § 72, *post*,  
p. 276.

Bond.

See Charter,  
§ 33, *ante*, p. 14.

He may appoint  
a deputy, in  
case, &c.  
1847, 234, § 5.

Compensation.  
Ibid.

His duties and  
authority.  
Ibid. § 6.

Recovery of  
penalties.  
Ibid. § 7.

Harbor mas-  
ter's further  
authority.

1848, 314, § 1.

Penalty for obstructing him in the performance of his duties, or for neglect to obey his orders. How to be recovered. Ibid.

Master or owners liable for throwing stones, &c., in harbor. Ibid. § 2.

Yards of vessels at wharf to be cockbilled &c. Ibid. § 3. Vessels in harbor to keep an anchor watch, and light. Ibid. § 4. Penalty; how to be recovered. Ibid.

No ashes, &c., to be thrown into the harbor. 1837, 229, § 7.

Penalty for carrying away stones, gravel, &c. 1856, 301, § 1; See §§ 6, 7, *ante*.

vessels in the upper harbor of Boston, and when necessary to order the removal of such vessels, and to cause the same to be removed in obedience to such order, at the expense of the master or owners thereof; and if any person shall obstruct said harbor master in the performance of any of his duties, as prescribed by this, the seven preceding, or the three succeeding sections, or shall neglect or refuse to obey any lawful order made by said harbor master, he shall be liable to a penalty, not exceeding fifty dollars for each offence, to be recovered by indictment, for the use of the city of Boston.

62. Whenever any person on board of any vessel shall violate the provisions of the fifty-sixth section, the master or owners of said vessel shall be liable to the penalty prescribed in said last-mentioned section, as well as the person so offending.

63. The provisions of the fifty-fifth section shall apply to all the yards of vessels as well as the lower yards, anything in said last-mentioned section to the contrary notwithstanding.

64. All vessels at anchor in the harbor of Boston shall keep an anchor watch at all times, and shall keep a clear and distinct light, suspended at least six feet above the deck, during the night; and whenever the provisions of this section shall be violated on board any vessel, the master or owners shall be liable to a penalty of not more than twenty dollars, to be recovered in the manner provided in section sixty, and shall be held liable to pay all damages that may be occasioned by such violation.

65. No ashes, cinders, or other rubbish or materials of any description shall be put or thrown out of any steamboat in the harbor of Boston above Fort Independence, under a penalty of ten dollars for each offence.<sup>1</sup>

66. By an act passed June 6, 1856, it is prescribed that any person who shall take, carry away, or remove, by land or water, any stones, gravel, or sand from any of the beaches, headlands, or islands within or bordering upon Boston harbor, without a

<sup>1</sup> For further provisions as to Boston harbor, see Resolves of 1850, cc. 27 and 111; 1852, c. 79; 1854, c. 361; 1855, c. 60.

license therefor from the mayor and aldermen of the city of Boston, shall for each offence forfeit a sum not exceeding twenty dollars, to be recovered by complaint or indictment, in any court of competent jurisdiction.

67. The same act declares that Boston harbor, for the purposes of that act, shall be deemed to extend to a line drawn from the outer end of Commercial Point in the town of Dorchester, direct to the outer end of Point Alderton in the town of Hull; thence to the outer end of the outer Brewster Island, and thence direct to the Short Beach, at the division lines between the towns of North Chelsea and Winthrop. All acts and parts of acts inconsistent with said act are repealed.

Limits of Boston harbor for certain purposes.  
Ibid. §§ 2, 3.

Inconsistent acts repealed.  
Ibid. § 3.

68. By an act relating to criminal jurisdiction in Boston harbor, passed March 27, 1858, it is declared that the courts in the county of Suffolk shall, concurrently with the courts of other counties in which the territory hereinafter described is situated, have jurisdiction of all crimes, offences, and misdemeanors which shall be hereafter committed on either of the islands or any of the waters in Boston harbor which lie westerly of a line drawn from Point Alderton to the easternmost point of the outer Brewster Island, and from thence to Short Beach, at the line dividing the towns of North Chelsea and Winthrop; and all such crimes, offences, and misdemeanors may be prosecuted and punished in the courts in the county of Suffolk as fully and effectually as they might be prosecuted and punished therein if the said islands and waters were within the territorial limits of the county of Suffolk.

Limits of concurrent criminal jurisdiction in Boston harbor by courts of the county of Suffolk with courts of other counties.  
1858, 135.

69. By an act passed March 5, 1860, it is prescribed that any person or persons who shall moor any vessel, scow, boat, or raft to any buoy or beacon or floating guide, placed by the United States in the navigable waters of this commonwealth, or who shall in any manner make fast thereto any vessel, boat, scow, or raft, shall forfeit and pay a sum not exceeding fifty dollars; and any person or persons who shall wilfully destroy, injure, or remove any such beacon or guide, shall forfeit and pay a sum not exceeding one hundred dollars, or be imprisoned in the common jail not exceeding three months. Said forfeit-

Mooring to buoys, beacons, or floating guides prohibited.  
1860, 53, § 1.

Penalty.  
Ibid.  
Penalty for wilful destruction of buoys, beacons, or guides.  
Ibid.

Forfeitures,  
how recovered.  
1860, 53, § 2.

ures may be recovered by an action of tort, complaint, or indictment, before any court competent to try the same; one third accruing to the informer or complainant, and the other two thirds to the county in which the trial shall be had.

No raft, &c., to  
be moored to  
any private  
bridge, wharf,  
&c., except,  
&c.  
1862, 73, § 1.

70. By an act passed March 19, 1862, it is provided that every person who shall attach or moor any raft, or collection of spars, logs, piles, timber, or lumber to any bridge, pier, or wharf in the harbor of Boston, longer than ten hours, without the written consent of the owner thereof, shall for every such offence forfeit and pay to such owner a sum of not less than twenty-five dollars, and five dollars for every successive day during which such attachment or mooring shall be so continued; and shall be further liable for all damages to such bridge, pier, or wharf, caused by such attachment, or mooring, or any continuance thereof, to be recovered by an action of tort.

Penalty.  
Ibid. § 2.

No raft, &c., to  
be moored to  
any public  
wharf, &c., ex-  
cept, &c.  
Ibid.

71. Every person who shall attach or moor any raft, or collection of logs, spars, piles, timber, or lumber to any public bridge in the harbor of Boston, for more than ten hours, without the permission in writing of the mayor of Boston, shall be liable to a penalty of not less than twenty-five dollars, and five dollars for every succeeding day during which such attachment or mooring shall be so continued; to be recovered by complaint before the police court of the city of Boston.

Harbor master  
to be appointed  
by mayor and  
aldermen; his  
duties pre-  
scribed by city  
council.  
1862, 64, §§ 1-4.  
See § 58, *ante*.

72. By an act passed March 11, 1862, it is provided that the harbor master for the port of Boston shall hereafter be appointed by the mayor and aldermen of the city of Boston, instead of the city council of said city; and he shall continue to have all the powers, and be subject to all the duties, liabilities, and obligations which now appertain by law to the said office; and the city council of the city of Boston may make and ordain all such ordinances, rules, orders, and regulations for prescribing the duties, and controlling the action of the said harbor master, as they shall deem expedient; *provided*, such ordinances, rules, orders, and regulations are not repugnant to law; and they may, if they shall deem it expedient, provide by ordinance for adding to the duties of the said harbor master the duties of captain of the harbor police. The act is to take effect as soon as

the same shall be accepted by the city council of the city of 1862, 64, §§ 1-4. Boston ;<sup>1</sup> and all acts and parts of acts inconsistent with the provisions of the act are repealed.

ORDINANCE.<sup>2</sup>

There shall be appointed, annually, a joint standing committee of the city council, consisting of two members of the board of aldermen, and three members of the common council, whose duty it shall be to suggest such measures, and do and perform such acts, as may by them from time to time be deemed necessary for the preservation of Boston harbor and the security of the rights and interests of the city therein ; *provided*, no expense shall be incurred exceeding the appropriation previously made by the city council for these purposes.

Joint standing  
committee on  
the preserva-  
tion of the  
harbor.  
Their duties.  
Nov. 12, 1846.

## HAWKERS AND PEDLERS.

## STATUTES.

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Articles which may be sold by hawkers and pedlers without license.</li> <li>2. Cities and towns may regulate such sales by minors. Penalty.</li> <li>3. Prohibited articles.</li> <li>4. Secretary may grant licenses on certificate of mayor, &amp;c., for sale of goods not prohibited.</li> <li>5. Form and effect of license. Party may sell on payment, &amp;c.</li> <li>6. Fees for license.</li> <li>7. Residents paying taxes, &amp;c., may be licensed without fee.</li> <li>8. State licenses. County licenses.</li> </ol> | <ol style="list-style-type: none"> <li>9. Records of licenses.</li> <li>10. Sums paid for licenses, how appropriated.</li> <li>11. Licenses may be transferred.</li> <li>12. Persons licensed, to post name, residence, &amp;c., on parcels or vehicles, and exhibit license on demand, &amp;c.</li> <li>13. Licenses not to protect party, &amp;c. Shall be void, if, &amp;c.</li> <li>14. Penalty for counterfeiting, &amp;c., licenses, and selling without license.</li> <li>15. Penalty for unauthorized sales.</li> <li>16. Hawkers, &amp;c., licensed as auctioneers not to sell, &amp;c.</li> </ol> |
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<sup>1</sup> The above act has not been accepted by the city council.

<sup>2</sup> An ordinance relating to the preservation of Boston harbor, passed November 12, 1846.

## STATUTES.

Articles which  
may be sold by  
pedlers without  
license.  
G. S. 50, § 13.

1862, 178.  
See §§ 3, 13.

Cities and  
towns may reg-  
ulate such sales  
by minors.  
Penalty.  
G. S. 50, § 14.

Prohibited  
articles.  
Ibid. § 15.  
See §§ 5, 8, 13.

Secretary may  
grant licenses  
on certificate of  
mayor, &c., for  
sale of goods  
not prohibited.  
G. S. 50, § 16.  
See §§ 6, 7, 8,  
11, 13.

1. Any person may go about from town to town, or from place to place, or from dwelling-house to dwelling-house in the same town, exposing to sale and selling fruits and provisions, live animals, brooms, agricultural implements, fuel, newspapers, books, pamphlets, agricultural products of the United States, and the products of his own labor or the labor of his family, but nothing in this section shall be so construed as to include therein any articles of the growth or production of foreign countries.

2. The city council of any city, and the inhabitants of any town, may authorize the mayor and aldermen or selectmen thereof to restrain the sale by minors of any goods, wares, or merchandise, the sale of which is permitted in the preceding section; and while such authority remains in force, the mayor and aldermen and selectmen may make rules restraining such sales by minors, or may grant licenses to minors to make such sales upon such terms and conditions as they shall prescribe; but such restraints and licenses shall not remain in force beyond their term of office. Whoever is guilty of a violation of the rules and regulations so made, or sells any such articles without a license when the same has been required, shall forfeit a sum not exceeding ten dollars for each offence.

3. The sale of jewelry, wines, spirituous liquors, playing cards, indigo, and feathers, in the manner specified in section one, is prohibited.

4. The secretary of the commonwealth may grant a license to go about exposing to sale and selling any goods, wares, or merchandise, not prohibited in the preceding section, to any applicant who files in his office a certificate signed by the mayor of a city or by a majority of the selectmen of a town, stating that to the best knowledge and belief of such mayor or selectmen, the applicant therein named resides in such city or town, is a citizen of the United States, and of good reputation for morals and integrity. The mayor or selectmen before granting such certificate shall require the applicant to make oath that he is the person named

therein, that he is a resident of such city or town, and a citizen of the United States; which oath shall be certified by a justice of the peace, and accompany the certificate. Every license so granted shall bear date the first day of January of the year in which it is granted, and shall continue in force one year, and no longer.

5. The secretary shall cause to be inserted in every license the names of such cities and towns as the applicant selects, with the sum to be paid to the respective treasurers thereof annexed, and shall receive from the applicant one dollar for each city or town so inserted. Every person so licensed may sell as aforesaid any goods, wares, and merchandise, not prohibited in section three, in any city or town mentioned in his license, upon first paying the sum so required to the treasurer of such city or town, who shall certify on the face of the license the sum so received.

G. S. 50, § 16.  
Form and effect  
of license.  
Party may sell  
on payment, &c.  
Ibid. § 17.  
See §§ 6, 7, 13.

6. Every person licensed under the two preceding sections shall pay to the treasurer of each city or town mentioned in his license the sums following: for every town containing not more than one thousand inhabitants, according to the United States census next preceding the date of his license, three dollars; for every town containing more than one thousand and not more than two thousand inhabitants, six dollars; for every town containing more than two thousand and not more than three thousand inhabitants, eight dollars; for every town containing more than three thousand and not more than four thousand inhabitants, ten dollars; and for every city and town containing more than four thousand inhabitants, ten dollars, and one dollar for every one thousand inhabitants over four thousand contained therein, but the sum so to be paid to a treasurer shall in no case exceed twenty-five dollars.

Fees for  
license.  
G. S. 50, § 18.  
See § 13.

7. Any person resident, paying taxes upon his stock in trade, and qualified to vote, in a city or town, may there expose to sale and sell goods, wares, or merchandise, upon obtaining a license pursuant to the provisions of sections four and five, and shall not be required to pay to the treasurer of such city or town any sum therefor.

Residents pay-  
ing taxes, &c.,  
may be licensed  
without fee.  
G. S. 50, § 19.  
See §§ 11, 13.

8. The secretary, upon the conditions required in section four, State licenses,

G. S. 50, § 20. may grant special state licenses, upon payment by the applicant of one hundred dollars for each license; and the person so licensed may expose to sale any goods, wares, or merchandise, not prohibited in any city or town. He may also grant as aforesaid, upon payment by the applicant of one dollar for each county mentioned therein, special county licenses; and the person so licensed may expose to sale, within such counties, any tin, britannia, glass or wooden wares, of the manufactures of the United States, or any other goods, wares, or merchandise manufactured by himself or his employer, and not prohibited in section three, upon tendering to the treasurer of each county mentioned in said license, respectively, the sums following: for Suffolk, Essex, Middlesex, and Worcester, each four dollars; for Norfolk, Berkshire, Hampden, Bristol, and Plymouth, each three dollars; for Franklin, Hampshire, and Barnstable, each two dollars; for Nantucket, one dollar; for the county of Dukes County, one dollar. And the county treasurers, respectively, upon the receipt of any sum, as aforesaid, shall certify the amount so received on the face of the license.

County  
licenses.  
Ibid.  
See § 13.

Records of  
licenses.  
G. S. 50, § 21.  
See § 13.

9. The secretary shall keep a record of all licenses granted, with the number of each, the name and residence of the persons licensed, the counties, cities, and towns mentioned therein, of all special state licenses, and of all transfers of licenses. The treasurers of the counties, cities, and towns shall severally keep records of all licenses upon which the sums provided in this chapter have been paid, with the number of each, the name and residence of the persons licensed, and the sums received thereon, and all such records shall be open for public inspection.

Sums paid for  
licenses, how  
appropriated.  
G. S. 50, § 22.  
See § 13.

10. All sums paid to the secretary under this chapter shall be for the use of the state; and all sums paid to the treasurer of a county, city, or town shall be for the use of such county, city, or town.

Licenses may  
be transferred.  
G. S. 50, § 23.  
See § 13.

11. A license granted under the provisions of section four or seven may be transferred by the secretary, upon application therefor and upon evidence furnished by the applicant like that required for granting a license. The person to whom it is transferred shall thereafter be liable in all respects as if

he were the person originally licensed. No person shall sell under such license, except the person named therein or in such transfer. G. S. 50, § 23.

12. Every person licensed to peddle as hereinbefore provided shall post his name, residence, and the number of his license in a conspicuous manner upon his parcels or vehicle, and when such license is demanded of him by any mayor, alderman, selectman, town or city treasurer or clerk, constable, police officer, or justice of the peace, shall forthwith exhibit it; and if he neglects or refuses so to do shall be subject to the same penalty as if he had no license. So much of this chapter as relates to hawkers and peddlers, or a synopsis thereof, shall be printed on every license. Persons licensed to post name, &c., on parcels or vehicle, and exhibit license on demand, &c. Ibid. § 24. See § 1.

13. No license to go about offering for sale or selling as aforesaid shall operate to defeat or bar a prosecution against the person licensed, if it is proved that he exposed to sale any article except such as are permitted in section one in any county, city, or town where he was not licensed to sell, or in which he had not paid the sum mentioned in his license; but no person so licensed shall be required to make payment to the treasurer of any county, city, or town before he is prepared to trade therein. The license of any person convicted of a violation of any provision of this or the ten preceding sections shall be void. Licenses, when not to protect party, &c. Shall be void, if, &c. G. S. 50, § 25.

14. Whoever counterfeits or forges a license, or has a counterfeit or forged license in his possession, with intent to utter or use the same as true, knowing it to be false or counterfeit, or attempts to sell under a license which has expired, or is forfeited, or which was not granted or has not been transferred to him, shall forfeit a sum not exceeding one thousand dollars. Penalty for counterfeiting, &c., licenses, and selling without license. Ibid. § 26.

15. Whoever goes from town to town, or from place to place, or from dwelling-house to dwelling-house, carrying for sale or exposing to sale any goods, wares, or merchandise, or takes a residence in any town for that purpose for a less term than one year, except as hereinbefore provided, shall forfeit a sum not exceeding two hundred dollars for each offence. Penalty for unauthorized sales. Ibid. § 27.

16. No hawker, pedler, or other itinerant trader, holding an auctioneer's license, shall sell or expose for sale by public auc- Hawkers, &c., licensed as auctioneers, not to

sell, &c., in any other city or town, &c.  
G. S. 50, § 28.

tion any goods, wares, or merchandise in any other city or town than that from whose authorities such license was obtained ; nor in any place in such city or town except such as shall be expressly described or set forth in said license.

## HAY AND HAY SCALES.

### STATUTES.

1. Superintendents of hay scales and weighers of hay, &c., appointed by mayor and aldermen.
2. Their duty to comply with rules and regulations of city council, &c.
3. May be removed by mayor and aldermen.
4. Penalty for setting up hay scales without authority.
5. Pressed hay, how branded.
6. Forfeiture for selling without brand.
7. Inspectors of bale and bundle hay, appointment of; to be sworn.
8. Their duty to inspect, &c., hay, &c., when requested.
9. How bales, &c., shall be numbered and marked.
10. Inspectors to furnish weights, seals, &c.

11. Fees to be fixed by mayor and aldermen.
12. Penalty for selling without inspection.
13. Provisions relating to weighing, &c., hay, to apply to straw.

### ORDINANCE.

1. Stands for sale of hay and straw appointed by mayor and aldermen.
2. Penalty for standing in any other place for sale of hay or straw.
3. Scales to be established by mayor and aldermen, &c. Weighers appointed.
4. Duties of weighers.
5. Form of weighers' accounts and certificates.
6. Fees of weighers established. To be paid to city treasurer.
7. Compensation of weighers to be fixed by city council.
8. G. S. 49, §§ 72, 73, 74, and 75 adopted.

### STATUTES.

Superintendents of hay scales, and weighers of hay to be appointed.  
G. S. 49, § 72.

1. In cities in which the city council and in towns in which the inhabitants shall adopt <sup>1</sup> this and the three following sections, the mayor and aldermen and selectmen may from time to time appoint, for a term not exceeding one year, some person or persons to have the superintendence of the hay scales belonging to

<sup>1</sup> Adopted. See *post*, p. 286, § 8.

their place, who shall weigh hay offered for sale therein, and any other article offered to be weighed. G. S. 49, § 72.

2. The persons so appointed shall conform to all such rules and regulations as shall be established by the city council or selectmen respectively concerning the hay scales, and the compensation or fees for weighing hay and other articles. Their duty. Ibid. § 73.

3. The mayor and aldermen or selectmen may remove any weigher of hay, and fill any vacancy that may occur from death or otherwise. May be removed. Ibid. § 74.

4. If a person not so appointed sets up hay scales in a town or city, for the purpose of weighing hay or other articles, he shall forfeit twenty dollars a month so long as the same are continued, to be recovered in an action of tort and appropriated to the use of the city or town. Penalty for setting up hay scales without authority. Ibid. § 75.

5. Pressed hay offered for sale shall be branded upon the crate enclosing it with the first letter of the christian name and the whole of the surname of the person packing and screwing or otherwise pressing said hay, and with the name of the city or town and state where the hay is pressed. Pressed hay, how branded. Ibid. § 76.

6. Pressed hay offered for sale without being so branded shall be forfeited, one half to the person or persons prosecuting therefor, and the other half to the use of the city or town where the same is so offered for sale, and may be seized and libelled. Forfeiture for selling without brand. Ibid. § 77.

7. The mayor and aldermen and selectmen of each city and town in which bale or bundle hay is sold may, on the petition of ten or more legal voters of such city or town, annually appoint one or more persons as inspectors of bale or bundle hay, who shall be sworn, and may remove any inspector so appointed, and fill any vacancy that may occur from death or otherwise. Inspectors of bundle hay, appointment of; to be sworn, &c. Ibid. § 78.

8. Each inspector shall inspect and weigh all bale or bundle hay within the limits of the city, town, or ward for which he may be appointed, when requested so to do by the owner or vendor. Duties of inspector. Ibid. § 79.

9. Bales or bundles of hay so inspected which are found to be sweet, of good quality, and free from damage or improper mixture, shall be branded or marked *No. 1*. Bales or bundles found to be sweet, and free from damage or improper mixture, Bundle hay, &c. how numbered and marked. Ibid. § 80.

Numbers and  
Marks.  
G. S. 49, § 80.

but consisting of hay of a secondary quality, shall be branded or marked *No. 2*. Bales or bundles found to be wet, or in any way damaged, or which shall contain straw or other substances not valuable as hay, shall be branded or marked *Bad*. Each bale or bundle so inspected shall be branded or marked with the first letter of the christian name and the whole of the surname of the inspector, and the name of the place for which he is inspector, together with the month and year when inspected, and also the net weight of the bundle.

Inspectors to  
furnish  
weights, &c.  
Ibid. § 81.

10. Each inspector shall furnish himself with proper scales, weights, seals, and other suitable instruments for the purposes aforesaid.

Fees.  
Ibid. § 82.

11. The fees for inspecting, weighing, and marking hay, as provided for in this chapter, shall be fixed by the respective officers having the power of appointment, and shall be paid by the employer of the inspector.

Penalty for sell-  
ing without in-  
spection, &c.  
Ibid. § 83.

12. Whoever sells bale or bundle hay in a place where an inspector is appointed, which has not been inspected and weighed as herein provided, shall forfeit for each bale or bundle so sold two dollars; but no inspection need be made where the vendor and vendee agree to waive an inspection.

Foregoing pro-  
visions to ap-  
ply to straw.  
1861, 67.

13. All the provisions in the preceding twelve sections relating to the inspection, weighing, branding, and sale of pressed or bundled hay, shall also apply to pressed or bundle straw.

#### ORDINANCE.<sup>1</sup>

Stands for sale  
of hay and  
straw.  
Aug. 20, 1850.

SECTION 1. The board of aldermen shall appoint suitable places in the streets or squares of the city, as stands for the sale of hay and straw.

Penalty for  
standing in any  
other place for  
sale of hay or  
straw.  
Ibid.

SECT. 2. The owner or driver of any wagon, cart, sled, or other carriage containing hay or straw for sale, who shall stand for the sale of such hay or straw in any other street, square, or place whatsoever, than one of those so appointed by the board of aldermen, shall be liable to a penalty not exceeding fifty dollars.

<sup>1</sup> An ordinance relating to the weighing of hay and other articles, passed August 20, 1850.

SECT. 3. The board of aldermen shall establish from time to time a sufficient number of public scales for the weighing of hay and other articles, and cause the same to be erected, and furnished with decimal weights, which shall be used in all cases; and the mayor, by and with the advice and consent of the said board, shall appoint suitable persons to have the superintendence of the same, and to weigh hay and other articles, according to law.

Scales to be established, &c.  
Aug. 20, 1850.

Weighers to be appointed.

SECT. 4. The persons so appointed shall attend personally at the scales which may be assigned to them respectively, every day through the year, Sundays, public fasts, thanksgivings, Christmas, Washington's birthday, and the anniversary of American Independence excepted, from sunrise to sunset, (with liberty to close their respective offices from seven to eight o'clock in the forenoon during the months of April, May, June, July, August, and September, and from eight to nine o'clock during the other six months, and from one to two o'clock in the afternoon through the whole year,) and shall deliver to the driver of every load of hay or straw weighed a certificate, in such form as is hereinafter provided; and shall keep an account of all hay and other articles which shall be weighed at said scales, in books to be furnished by the board of aldermen, which shall be always open to their inspection, and when filled shall be deposited with the city clerk.

Duties of weighers.  
Ibid.

SECT. 5. The accounts to be kept by said weighers, and the certificates to be given to the drivers of loads, as mentioned in the preceding section, shall specify the name of the owner or driver, the town from which the load shall have been driven, the weight and tare, the amount of fees received, and the date of the certificate.

Form of weighers' accounts and certificates.  
Ibid.

SECT. 6. The fees for weighing hay and other articles, to be received by the said weighers, and by them paid over to the city treasurer as provided by the city ordinances, shall be as follows, to wit: one cent and a half for every hundred pounds of hay or straw, one half of a cent for every hundred pounds of anthracite or other coal, and one cent for every hundred pounds of all other articles; *provided*, that the fee for weighing any

Fees for weighing.  
Ibid.

Aug. 20, 1850.

article other than hay or straw shall never be less than ten cents. The cart or vehicle containing the same, and other tare shall be weighed without any charge. And no fees shall be taken for any weighing done on account of the city.

Compensation  
of weighers.  
Ibid.

G. S. 49, §§ 72,  
73, 74, 75,  
adopted.

SECT. 7. The said weighers shall receive such compensation as the city council may from time to time determine.

SECT. 8. The seventy-second, seventy-third, seventy-fourth, and seventy-fifth sections of the forty-ninth chapter of the General Statutes, are hereby adopted.

## HEALTH.

### STATUTES.

1. Towns to choose board of health, or health officer; or selectmen to act.
2. City council to appoint board of health, or make either or both branches, or a committee, the board.
3. Board may appoint physician.
4. Compensation of physician, &c.

### NUISANCES, CONTAGION, ETC.

5. Board to make regulations respecting nuisances, &c.
6. Board to give notice of their regulations.
7. Board to examine into and abate nuisances, &c.
8. Board to order nuisances, &c., abated; penalty on owner of land, &c., for refusing.
9. Order of abatement, how served.
10. Owner not complying, board to remove the nuisance at his expense.
11. Board may notify occupants of unfit dwelling-place to quit, &c.
12. When a party is convicted of nuisance, court may order it destroyed.

13. Superior court may issue injunctions in cases of nuisance.
14. Board may make compulsory examination of premises, when refused, &c.
15. Board may grant permits for the removal of infected articles or sick persons.
16. Board to make necessary provision for persons infected with dangerous diseases.
17. If infected person cannot be removed, others may be.
18. Persons may be stationed on borders of other states, to examine, &c.
19. Two justices of the peace may issue warrant to remove sick persons.
20. One justice may issue warrant to sheriff to secure infected articles, who may impress aid.
21. Sheriff may take up houses and stores, &c., for safe-keeping of goods, &c.
22. Officers may break open houses, shops, &c., and command aid.
23. Expenses to be paid by owners of goods.
24. Town to make compensation for

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| <p>houses, &amp;c., or services impressed.</p> <p>25. Removal of prisoners attacked with disease.</p> <p>26. Return of removal to be made to court; such removal not an escape.</p> <p style="text-align: center;">VACCINATION.</p> <p>27. Parents, &amp;c., to cause children and wards to be vaccinated. Penalty for neglect.</p> <p>28. Selectmen, &amp;c., to enforce vaccination and revaccination. Penalty for neglect.</p> <p>29. Towns to provide means for vaccination.</p> <p>30. Inmates of manufactories, almshouses, &amp;c., to be vaccinated,</p> <p>31. Towns may make further provision for vaccination.</p> <p style="text-align: center;">QUARANTINE.</p> <p>32. Towns may establish quarantine ground.</p> <p>33. Two or more towns may establish a common quarantine ground.</p> <p>34. Board of health may establish the quarantine of vessels.</p> <p>35. Quarantine regulations to extend to all persons, &amp;c.</p> <p>36. Penalty for violation after public notice.</p> <p>37. Vessels suspected of infection to be ordered to quarantine ground.</p> <p>38. Penalty if master, seamen, &amp;c., refuse to make answer on oath, &amp;c.</p> <p>39. Quarantine expenses to be paid by person or owner.</p> <p style="text-align: center;">HOSPITALS AND DANGEROUS DISEASES.</p> <p>40. Hospitals may be provided by towns.</p> <p>41. Hospitals to be under orders of board of health.</p> <p>42. Hospitals not to be established within one hundred rods of house in adjoining town, unless, &amp;c.</p> <p>43. Physicians and others in hospi-</p> | <p>tals to be subject to board of health.</p> <p>44. Board of health to provide hospital or other place when, &amp;c.; may cause sick and infected persons to be removed to hospitals.</p> <p>45. Selectmen to give notice, by suitable signals, of infected places.</p> <p>46. Penalty on physicians and others in hospitals, &amp;c., for violating regulations.</p> <p>47. Every householder to give notice of dangerous disease in his family. Penalty.</p> <p>48. Penalty on physicians for not giving notice of dangerous disease.</p> <p>49. Expenses recoverable of individuals, how sued for.</p> <p>50. Fines and forfeitures to inure to use of town.</p> <p>51. Certain provisions not to apply to small-pox.</p> <p style="text-align: center;">OFFENSIVE TRADES.</p> <p>52. Board to assign places for exercising offensive trades, and may prohibit.</p> <p>53. Superior court may, on complaint, revoke such assignment.</p> <p>54. Action for damages from nuisance.</p> <p>55. Orders of prohibition, &amp;c., to be served on occupant. If he refuses to obey, board may prevent. Penalty.</p> <p>56. Appeal by person aggrieved. Proceedings.</p> <p>57. Trade not to be exercised pending proceedings.</p> <p>58. Verdict of jury may alter, &amp;c., order; to be returned for acceptance.</p> <p>59. Costs, — how and when assessed, on whom, and to what amount.</p> <p>60. Chapter extends to cities.</p> <p style="text-align: center;">DEAD BODIES.</p> <p>61. Overseers of the poor, &amp;c., to permit physicians to take dead bodies in certain cases.</p> |
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62. Physicians, &c., to give bond on receiving a dead body.
63. Persons having charge of poor-house, &c., to give notice of death.
64. Dead bodies not to be given to physicians if claimed by friends, or if deceased requested to be buried, &c.
65. Violation of sepulture, penalty for.
66. Buying or having dead body for purpose of sale, penalty for.

## CEMETERIES AND BURIALS.

67. Towns to provide burial-places.
68. Private land not to be used for burial purposes, except, &c.
69. Boards of health to make necessary regulations, &c.
70. Boards of health to give notice of regulations.
71. Notice to be given before closing tombs, &c., by order of board.
72. Appeal from order of board.
73. Appeal to be tried by a jury. Costs.
74. Penalty for interments in violation of this chapter.
75. Injury to tombs or cemeteries, &c.
76. Same. Penalties.
77. Making roads, canals, &c., through burying-grounds prohibited. Penalty.

## OFFENCES AGAINST THE PUBLIC HEALTH.

78. Selling corrupt or unwholesome provisions without notice.
79. Killing for sale or selling calves less than four weeks old.
80. Adulterating food.
81. Adulteration of liquor, &c., with *coccus indicus*, &c.
82. Adulteration of drugs and medicines.
83. Wilfully corrupting springs, &c., or injuring aqueduct.
84. Persons selling arsenic, &c., to

keep record, &c. Purchasers who give false name, &c.

85. Damaged fish not to be sold or exported, &c. Penalty.

## ORDINANCE.

1. Board of aldermen shall constitute the board of health.
2. Mayor to protect public health, and enforce all laws and ordinances.

## SUPERINTENDENT OF HEALTH.

3. A superintendent of health chosen by city council.
4. He may appoint an assistant.
5. To execute all laws and ordinances on the subject of health.
6. To give bond.
7. Duties of superintendent to keep records and make reports to the city council.
8. To report an estimate to auditor of the wants of his department.
9. To have charge of city teams, stables, &c.
10. To make and deliver all bills for materials sold and work done to city treasurer, for collection.
11. To make up pay-rolls of laborers.

## INTERMENT OF THE DEAD.

12. Interment of dead shall be under superintendence of city registrar.
13. He shall have care of burying-grounds.
14. May give licenses for burials, &c.
15. Dead bodies shall not be buried without license.
16. Graves shall be three feet deep.
17. Registrar shall provide funeral cars, &c.
18. Funeral undertakers. Porters. No other person shall manage a funeral.
19. Time for burials. Tolling of bells prohibited, except, &c. Funeral car to be used, except, &c.
20. No grave to be dug in city proper without permission.

21. No dead body to be removed from city without license.
22. No dead body in graves or tombs to be disturbed without license.
23. No grave or tomb to be opened from June to October, without license.
24. Burial fees.
25. Board of aldermen may make regulations in relation to burials.

## CITY PHYSICIAN.

26. City physician to be elected.
27. Consulting physicians to be elected. Their duties.
28. City physician shall examine into nuisances, &c.
29. His apartment. He shall vaccinate inhabitants who apply, &c. Proviso.
30. To keep and supply vaccine virus.
31. To examine cases of disease when called upon by mayor and aldermen, &c.
32. To attend cases of disease, &c., at jail and city prison, &c.
33. To keep record of cases of small-pox, &c.
34. To keep record of doings of his office.
35. Harbor master shall report to city physician vessels having hides, &c.
36. Master of such vessel shall give notice to the harbor master or city physician.

## PORT PHYSICIAN.

37. Port physician to be elected.
38. To reside at Deer Island, and superintend quarantine hospital, &c.
39. To keep record of cases of small-pox, &c.
40. To keep record of his other doings.

## NUISANCES.

41. Owners, &c., of dwelling-houses, &c., shall furnish them with suit-

- able drains and privies. Penalty.
42. How vaults and privies shall be constructed.
43. Vaults may be connected with common sewers, by permission of superintendent of sewers.
44. Proceedings, where a suitable privy, vault, and drain is not constructed.
45. Offensive vaults, privies, and drains shall be cleansed.
46. Regulations as to cleansing vaults and privies.
47. Applications for cleansing vaults. What sums shall be paid therefor.
48. Further regulations.
49. Waste water to be carried off in drains.
50. Board of aldermen may remove persons from tenements, where too numerous, or when unprovided with vaults, &c.
51. House offal, how to be kept.
52. Manner of its removal. Not to be removed without license. Ashes, &c., from steam engines, furnaces, &c., to be removed by owner.
53. No filth shall be thrown out into streets, &c.
54. Penalty.
55. Filth, &c., may be removed by order of the board of aldermen.
56. Sale and keeping of fish regulated.
57. Fish, &c., not to be sold, &c., in certain streets, except, &c.
58. Vegetables to be divested of parts not used for food.
59. Swine and goats not to be kept without license.
60. Horses and carriages not to be washed in streets, &c.
61. Damaged grain, meat, fish, &c., not to be brought into city or landed without a permit.
62. Penalties for offences against this ordinance.
63. Repeal of former ordinances.

## STATUTES.

Towns to  
choose board of  
health or health  
officer ; or se-  
lectmen to act.  
G. S. 26, § 1.  
8 Cush. 68.

1. A town respecting which no provision is made by special law for choosing a board of health, may, at its annual meeting or at a meeting legally warned for the purpose, choose a board of health, to consist of not less than three nor more than nine persons ; or may choose a health officer. If no board or officer is chosen, the selectmen shall be the board of health.

City Council to  
appoint board  
of health, or,  
&c.  
G. S. 26, § 2.

2. Except where different provision is made by law, the city council of a city may appoint a board of health ; may constitute either branch of such council, or a joint or separate committee of their body, a board of health, either for general or special purposes, and may prescribe the manner in which the powers and duties of the board shall be exercised and carried into effect. In default of the appointment of a board with full powers, the city council shall have the powers and perform the duties prescribed to boards of health in towns.

Board may ap-  
point physician.  
Ibid. § 3.

3. Every board of health may appoint a physician to the board, who shall hold his office during its pleasure.

Compensation  
of physician,  
&c.  
Ibid. § 4.

4. The board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations.

## NUISANCES, CONTAGION, ETC.

Board to make  
regulations  
respecting nui-  
sances, &c.  
Ibid. § 5.

5. The board shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth, and causes of sickness within its town, or on board of vessels within its harbor ; and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into or conveyed from its town, or into or from any vessel. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars.

Board to give  
notice of regu-  
lations.  
Ibid. § 6.

6. Notice shall be given by the board of all regulations made by it, by publishing the same in some newspaper of its town, or where there is no such newspaper by posting them up in some public place in the town. Such notice shall be deemed legal notice to all persons.

7. The board shall examine into all nuisances, sources of filth, and causes of sickness within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and the same shall destroy, remove, or prevent, as the case may require.

To examine into and abate nuisances, &c.  
G. S. 26, § 7.  
11 Met. 572.

8. The board or the health officer shall order the owner or occupant at his own expense to remove any nuisance, source of filth, or cause of sickness, found on private property, within twenty-four hours, or such other time as it deems reasonable after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.

To order nuisances, &c., abated.  
Penalty for refusing.  
G. S. 26, § 8.  
See G. S. c. 87, § 5.  
c. 88, §§ 40, 42.

9. Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit, personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the state. But if the premises are unoccupied, and the residence of the owner or agent is unknown or without the state, the notice may be served by posting the same on the premises and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

Order for abatement, how served.  
G. S. 26, § 9.  
See G. S. c. 87, § 5.  
c. 88, §§ 40, 42.

10. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

Owner not complying, board to remove the nuisance at his expense.  
G. S. 26, § 10.  
See G. S. c. 87, § 5.  
c. 88, §§ 40, 42.

11. The board, when satisfied upon due examination that any cellar, room, tenement, or building in its town, occupied as a dwelling-place, has become by reason of the number of occupants, or want of cleanliness, or other cause, unfit for such purpose and a cause of nuisance or sickness to the occupants or the public, may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper con-

Board may notify occupants of unfit dwelling-place to quit, &c.  
G. S. 26, § 11.

G. S. 26, § 11.  
11 Met. 572.

dition as to cleanliness, or if they see fit requiring the occupants to remove or quit the premises within such time as the board may deem reasonable. If the persons so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not be again occupied as a dwelling-place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit a sum not less than ten nor more than fifty dollars.

When a party is convicted of a nuisance, court may order it destroyed.  
G. S. 26, § 12.

12. When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in their discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly.

Court may issue injunctions, in cases of nuisance.  
Ibid. § 13.

13. The superior court, or a justice thereof in term time or vacation, may, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same until the matter shall be decided by a jury or otherwise; may enforce such injunction according to the course of proceedings in chancery; and may dissolve the same when the court or one of the justices shall think proper.

Board may make compulsory examination of premises, when refused, &c.  
Ibid. § 14.

14. When the board think it necessary for the preservation of the lives or health of the inhabitants, to enter any land, building, or vessel within its town, for the purpose of examining into and destroying, removing, or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof, and the justices may thereupon issue a warrant directed to the sheriff or either of his deputies, or to any constable of such town, commanding him to take sufficient aid, and being accompanied by any two or more members of said board, at any reasonable time to repair to the place where such nuisance, source of filth, or cause of

sickness complained of may be, and the same to destroy, remove, or prevent, under the directions of such members of the board.

15. The board may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

May permit removal of infected articles, &c.  
Ibid. § 15.

16. When any person coming from abroad or residing in any town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants, by removing such person to a separate house or otherwise, and by providing nurses and other assistants and necessaries, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; and if he is not an inhabitant of any town, at the charge of the commonwealth.

Shall make provision for persons infected.  
Ibid. § 16.  
2 Cush. 52.  
See § 51.

17. If the infected person cannot be removed without danger to his health, the board shall make provision for him as directed in the preceding section in the house in which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

If infected person cannot be removed, others may be, &c.  
G. S. 26, § 17.  
See § 51.

18. The board of health of any town near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and if need be may restrain them from travelling until licensed thereto by the board of health of the town to which such person may come. A traveller coming from such infected place, who shall without such license travel within this state, (except to return by the most direct way to the state from whence he came,) after he has been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars.

Persons may be stationed in places bordering on other states, to examine, &c.  
G. S. 26, § 18.

19. Two justices of the peace may, if need be, make out a

Two justices of

the peace may  
issue warrant  
to remove sick  
persons.  
G. S. 26, § 19.

warrant directed to the sheriff of the county, or his deputy, or to any constable, requiring them under the direction of the board, to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessities, for the accommodation, safety, and relief of the sick.

One justice may  
issue warrant to  
sheriff to secure  
infected arti-  
cles, who may  
impress aid.  
Ibid. § 20.

20. When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that any baggage, clothing, or goods found within the town, are infected with the plague or other disease which may be dangerous to the public health, the justice shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing, or other goods, and to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same, until due inquiry is made into the circumstances.

Sheriff may  
take houses  
and stores, &c.,  
for safe-keeping  
of goods, &c.  
Ibid. § 21.

21. The justice may, by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe-keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

Officers may  
break open  
houses, shops,  
&c., and com-  
mand aid.  
Ibid. § 22.

22. The officers, in the execution of the warrant, shall if need be, break open any house, shop, or other place mentioned in the warrant where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

Expenses to be  
paid by owners  
of goods.  
Ibid. § 23.

23. The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

Town to make  
compensation  
for houses, &c.,  
or services  
impressed.

24. When a sheriff or other officer impresses or takes up any houses, stores, lodging, or other necessities, or impresses men, as provided in this chapter, the several parties interested

shall be entitled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed. G. S. 26, § 24.

25. When a person confined in a common jail, house of correction, or workhouse, has a disease which, in the opinion of the physician of the board or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall, by its order in writing, direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease, he shall be returned to said prison or other place of confinement. Removal of prisoners attacked with disease. Ibid. § 25.

26. If the person so removed is committed by order of court or under judicial process, the order of his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape. Return of removal to be made to court. Such removal not an escape. Ibid. § 26.

## VACCINATION.

27. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of two years, and revaccinated whenever the selectmen or mayor and aldermen shall after five years from the last vaccination require it. For every year's neglect the party offending shall forfeit the sum of five dollars. Parents, &c., to cause children &c., to be vaccinated. Penalty for neglect. Ibid. § 27.

28. The selectmen and mayor and aldermen shall require and enforce the vaccination of all the inhabitants, and, whenever in their opinion the public health requires, the revaccination of all the inhabitants who do not prove to their satisfaction that they have been successfully vaccinated or revaccinated within five years. All persons over twenty-one years of age, not under guardianship, who neglect to comply with any such requirement, shall forfeit the sum of five dollars. Selectmen, &c., to enforce vaccination, &c. Penalty for neglect. Ibid. § 28.

29. Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same. City to provide means. Ibid. § 29.

Inmates of  
manufactories,  
almshouses,  
&c., to be  
vaccinated.  
G. S. 26, § 30.

30. Incorporated manufacturing companies; superintendents of almshouses, state reform and industrial schools, lunatic hospitals, and other places where the poor and sick are received; masters of houses of correction, jailers, keepers of prisons, the warden of the state prison; and superintendents or officers of all other institutions supported or aided by the state, shall, at the expense of their respective establishments or institutions, cause all inmates thereof to be vaccinated immediately upon their entrance thereto, unless they produce sufficient evidence of previous successful vaccination within five years.

Towns may  
make further  
provision for  
vaccination.  
Ibid. § 31.

31. Each town may make further provision for the vaccination of its inhabitants, under the direction of the board or a committee chosen for the purpose.

#### QUARANTINE.

City may estab-  
lish a quaran-  
tine ground.  
Ibid. § 32.

32. A town may establish a quarantine ground in a suitable place either within or without its own limits; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

Two or more  
may establish a  
common quar-  
antine ground.  
Ibid. § 33.

33. Two or more towns may at their joint expense establish a quarantine ground for their common use in any suitable place either within or without their own limits; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be.

Board of health  
may establish  
quarantine of  
vessels.  
Ibid. § 34.

34. The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor; and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants.

Quarantine reg-  
ulations to ex-  
tend to all, &c.  
Ibid. § 35.

35. Such regulations shall extend to all persons, goods, and effects arriving in such vessels, and to all persons who may visit or go on board of the same.

Penalty for  
violation after  
notice.  
Ibid. § 36.

36. Whoever violates any such regulation after notice thereof has been given in the manner before provided in this chapter, shall forfeit a sum not less than five nor more than five hundred dollars.

37. The board in each seaport town may at all times cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same; and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders.

Vessels suspected of infection to be ordered to quarantine.  
G. S. 26, § 37.

38. If a master, seaman, or passenger belonging to a vessel on board of which any infection then is or has lately been, or is suspected to have been, or which has been at or has come from a port where any infectious distemper prevails that may endanger the public health, refuses to make answer on oath to such questions as may be asked him relating to such infection or distemper by the board of health of the town to which such vessel may come, (which oath any member of the board may administer,) such master, seaman, or passenger shall forfeit a sum not exceeding two hundred dollars; and if not able to pay said sum, he shall suffer six months' imprisonment.

Penalty, if master, seaman, &c., refuse to answer on oath, &c.  
Ibid. § 38.

39. All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person or the owner of such vessel or goods respectively.

Quarantine expenses, how paid by person or owner.  
Ibid. § 39.

#### HOSPITALS AND DANGEROUS DISEASES.

40. Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health.

Hospital may be provided by towns.  
Ibid. § 40.

41. Such hospitals shall be subject to the orders and regulations of the board, or of a committee of the town appointed for that purpose.

To be under orders of board of health.  
Ibid. § 41.

42. No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an adjoining town, without the consent of such town.

Hospitals not to be within, &c.  
Ibid. § 42.

43. When a hospital is so established, the physician, nurses, attendants, the persons sick therein, and all persons approaching

Physicians, &c., in hospitals subject to board

of health.  
G. S. 26, § 43.

or coming within the limits of the same, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose.

Board of health  
to provide hos-  
pital, &c., and  
remove sick,  
&c.  
Ibid. § 44.  
See § 51.

44. When a disease dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants; which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless the condition of such person will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided.

Selectmen to  
give notice of  
infected places.  
G. S. 26, § 45.  
See § 51.

45. When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety.

Penalty on  
persons in  
hospitals, &c.,  
for violating  
regulations.  
G. S. 26, § 46.  
See § 51.

46. If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with the same, violates any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property, he shall for each offence forfeit a sum not less than ten nor more than one hundred dollars.

Householders  
to give notice  
of dangerous  
diseases.  
Penalty.  
G. S. 26, § 47.

47. When a householder knows that a person within his family is taken sick of small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells. If he refuses or neglects to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

Penalty on phy-  
sician for not  
giving notice

48. When a physician knows that any person whom he is called to visit is infected with small-pox or any other disease

dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town; and if he refuses or neglects to give such notice he shall forfeit for each offence a sum not less than fifty nor more than one hundred dollars.

49. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, and which are recoverable of a private person or corporation by virtue of any provisions of law, may be sued for and recovered in an action of contract.

50. Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town relating to health, shall inure to the use of such town.

51. The provisions of sections sixteen, seventeen, forty-four, forty-five, and forty-six shall not apply to small-pox.

#### OFFENSIVE TRADES.

52. The board shall from time to time assign certain places for the exercising of any trade or employment which is a nuisance or hurtful to the inhabitants, or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors, or is otherwise injurious to their estates,<sup>1</sup> and may prohibit the exercise of the same in places not so assigned; the board may also forbid the exercise of such trade or employment within the limits of the town or in any particular locality thereof. All such assignments shall be entered in the records, and may be revoked when the board shall think proper.

53. When it appears on a trial before the superior court for the county, upon a complaint made by any person that any place or building so assigned has become a nuisance, by reason

<sup>1</sup> Carrying on an offensive trade for twenty years in a place remote from buildings and public roads does not entitle the owner to continue it in the same place, after houses have been built and roads laid out in the neighborhood, to the occupants of and travellers upon which it is a nuisance. *Commonwealth v. Upton*, 6 Gray, 473.

G. S. 26, § 53.

of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the court may revoke such assignment and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

Action for damages from nuisance.

Ibid. § 54.

54. A person injured either in his comfort or the enjoyment of his estate by such nuisance, may have an action of tort for the damage sustained thereby.

Orders of prohibition, &c., to be served on occupant. If he refuses to obey, board may prevent. Penalty.

Ibid. § 55.

55. Orders of prohibition under section fifty-two shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If the party upon whom such order is served, for twenty-four hours after such service refuses or neglects to obey the same, the board shall take all necessary measures to prevent such exercise; and the person so refusing or neglecting shall forfeit a sum not less than fifty nor more than five hundred dollars.

Appeal, by person aggrieved.

Proceedings.

Ibid. § 56.

56. Any person aggrieved by such order may appeal therefrom, and shall within three days from the service thereof upon him apply to the superior court, if in session in the county where such order is made, or in vacation to any justice of said court, for a jury; and such court or justice shall issue a warrant for a jury, to be impanelled at a time and place expressed in the warrant, in the manner provided in regard to the laying out of highways.

Trade not to be exercised meanwhile.

Ibid. § 57.

57. During the pendency of the appeal such trade or employment shall not be exercised contrary to the order; and upon any violation of the same the appeal shall forthwith be dismissed.

Verdict of jury may alter, &c., order; to be returned for acceptance, &c.

Ibid. § 58.

58. The verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance, as in case of highways; and said verdict, when accepted, shall have the authority and effect of an original order from which no appeal had been taken.

Costs,—how and when assessed; on whom; and to what amount

59. If the order is affirmed by the verdict, the town shall recover costs against the appellant; if it is annulled, the appellant shall recover damages and costs against the town; and if it

is altered, the court may render such judgment as to costs as in G. S. 26, § 59. their discretion may seem just.

60. The provisions of this chapter extend to cities so far as the same are not inconsistent with their several charters or acts in amendment thereof.

Provisions of  
this chapter  
extend to cities.  
Ibid. § 60.

#### DEAD BODIES.

61. The overseers of the poor of a town, the mayor and aldermen of a city, and the inspectors and superintendent of a state almshouse, may, to any physician or surgeon, upon his request, give permission to take the bodies of such persons dying in such town, city, or almshouse, as are required to be buried at the public expense, to be by him used within the state for the advancement of anatomical science; preference being given to medical schools established by law, for their use in the instruction of students.

Overseers of  
poor, &c., to  
give dead bodies  
to physicians in  
certain cases.  
G. S. 27, § 1.

62. Every physician or surgeon, before receiving any such dead body, shall give to the board of officers surrendering the same to him, a sufficient bond that each body shall be used only for the promotion of anatomical science within this state, and so as in no event to outrage the public feeling; and that, after having been so used, the remains thereof shall be decently buried.

Physicians, &c.,  
to give bond on  
receiving a dead  
body.  
Ibid. § 2.

63. Persons having charge of a poor-house, workhouse, or house of industry, in which a person required to be buried at the public expense dies, shall forthwith give notice of such death to the overseers of the poor of the town or to the mayor and aldermen of the city in which such death occurs; and except in case of necessity, the body of such person shall not be buried until such notice is given, and permission therefor granted by such overseers or mayor and aldermen; nor without their permission shall the body be surrendered for dissection or mutilation.

Persons having  
charge of poor-  
houses, &c., to  
give notice of  
death.  
Ibid. § 3.

64. If the deceased person during his last sickness, of his own accord requested to be buried, or if, within twenty-four hours after his death, any person claiming to be and satisfying the proper authorities that he is a friend or of kindred to the

When dead  
bodies are not  
to be given to  
physicians, &c.  
Ibid. § 4.

G. S. 27, § 4.

deceased, asks to have the body buried, or if such deceased person was a stranger or traveller who suddenly died, the body shall not be so surrendered, but shall be buried.

Violation of  
sepulture,  
penalty for.  
G. S. 165, § 37.  
10 Pick. 37.  
19 Pick. 304.

65. Whoever not being authorized by the board of health, overseers of the poor, directors of a workhouse, selectmen, or mayor and aldermen of any city or town, by the board of directors for public institutions, or overseers of the poor of the city of Boston, wilfully digs up, disinters, removes, or conveys away, any human body, or the remains thereof, or knowingly aids in such disinterment, removal, or conveying away, and whoever is accessory thereto, either before or after the fact, shall be punished by imprisonment in the state prison not exceeding one year, or in the jail not exceeding two years, or by fine not exceeding two thousand dollars.

Buying or hav-  
ing dead body  
for the purpose  
of sale, &c.,  
penalty for.  
G. S. 165, § 38.

66. Whoever buys, sells, or has in his possession for the purpose of buying or selling, or trafficking in, the dead body of any human being, shall be punished by fine of not less than fifty nor exceeding five hundred dollars, or by imprisonment in the jail not less than three months, nor exceeding three years.

#### CEMETERIES AND BURIALS.

Burial-places.  
G. S. 28, § 4.

67. Each town and city shall provide one or more suitable places for the interment of persons dying within its limits.

Private land not  
to be used for,  
except, &c.  
Ibid. § 5.  
See § 74.

68. Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town or of the mayor and aldermen of the city in which the same is situated.

Boards of  
health to make  
regulations, &c.  
G. S. 28, § 6.  
8 Cush. 68.

69. Boards of health may make all regulations which they judge necessary concerning burial-grounds and interments within their respective limits; may prohibit the use of tombs by undertakers (as places of deposit for bodies committed to them for burial), for the purpose of speculation, and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

To give notice

70. Notice of such regulations shall be given by publishing

the same in some newspaper of the town or city, or if there is no such newspaper, by posting a copy in some public place therein, which shall be deemed legal notice to all persons.

of regulations.  
G. S. 28, § 7.  
See § 74.

71. Before a tomb, burial-ground, or cemetery is closed by order of the board of health for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are of the proprietors of such burial-ground or cemetery, and notice shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are published in the county.

Notice to be  
given before  
closing tombs,  
&c., by order of  
board.  
G. S. 28, § 8.

72. The owner of a tomb aggrieved by the order of the board of health closing any tomb, burial-ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the board shall remain in force until a decision shall be had on the appeal.

Appeal from  
order of board.  
Ibid. § 9.

73. Appeals shall be tried in regular course before a jury, and if the jury find that the tomb, burial-ground, or cemetery so closed was not a nuisance, nor injurious to the public health at the time of the order, the court shall rescind the same so far as it affects such tomb, burial-ground, or cemetery, and execution for costs of the appeal shall issue in favor of the appellant against the town or city in which the same was situated. But if the order is sustained, execution shall issue for double costs against the appellant in favor of the board of health for the use of the town or city.

To be tried by a  
jury. Costs.  
Ibid. § 10.

74. For every interment in violation of section sixty-eight in a town or city in which the notice prescribed in section seventy has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

Penalty for  
violation of  
this chapter.  
Ibid. § 11.

75. Whoever wrongfully destroys, impairs, injures, or removes a tomb, gravestone, building, fence, railing, or other thing lawfully erected in or around a place of burial or ceme-

For injuring  
tombs, &c.  
Ibid. § 12.

G. S. 28, § 12.

tery, or a tree, shrub, or plant situate within its limits, or wrongfully injures a walk or path therein, or places rubbish or offensive matter within a place of burial or cemetery, or commits any nuisance therein, or in any way desecrates or disfigures the same, shall forfeit for every such offence not less than five nor more than one hundred dollars. Upon the trial of a prosecution for the recovery of such penalty, use, and occupation for the purposes of burial shall be deemed sufficient evidence of title.

Proof of title.  
Ibid.

Injuring or defacing tombs, memorials of the dead, &c.  
G. S. 165, § 39.

76. Whoever wilfully destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornament of any tomb, monument, gravestone, or other structure, before mentioned, or of any enclosure for the burial of the dead, or wilfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, or wantonly or maliciously disturbs the contents of a tomb or grave, shall be punished by fine not exceeding five hundred dollars nor less than ten dollars, or by imprisonment in the jail not exceeding one year.

Making roads, canals, &c., through burial grounds.  
Ibid. § 40.

77. Whoever lays out, opens, or makes a highway or town-way, or constructs a railroad, turnpike, or canal, or any other thing in the nature of a public easement over, through, in, or upon any part of such enclosure, being the property of a city, town, parish, religious society, or of private proprietors, used or appropriated for the burial of the dead, unless an authority for that purpose is specially granted by law, or unless the consent of such city, town, parish, religious society, or proprietors respectively is first obtained, shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the jail not exceeding one year.

#### OFFENCES AGAINST THE PUBLIC HEALTH.

Selling corrupt or unwholesome provisions without notice.

78. Whoever knowingly sells any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall be

punished by imprisonment in the jail not exceeding six months, G. S. 166, § 1. or by fine not exceeding two hundred dollars.

79. Whoever kills or causes to be killed, for the purpose of sale, any calf less than four weeks old, or knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than four weeks old, shall be punished by fine not exceeding two hundred dollars.

Killing for sale or selling calves less than four weeks old. Ibid. § 2.

80. Whoever fraudulently adulterates, for the purpose of sale, bread or any other substance intended for food, with any substance injurious to health, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; and the articles so adulterated shall be forfeited and destroyed under the direction of the court.

Adulterating food. Ibid. § 3.

81. Whoever adulterates, for the purpose of sale, any liquor used or intended for drink, with *coccus indicus*, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, log-wood, Brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health; and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison not exceeding three years; and the articles so adulterated shall be forfeited.

Adulteration of liquor used for drink, with *coccus indicus*, &c. Ibid. § 4.

82. Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars; and such adulterated drugs and medicines shall be forfeited, and destroyed under the direction of the court.

Adulteration of drugs and medicines. Ibid. § 5.

83. Whoever wilfully or maliciously defiles, corrupts, or makes impure any spring or other source of water or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year.

wilfully corrupting springs, &c., or injuring aqueduct. Ibid. § 6.

84. If an apothecary or other person sells any arsenic, strychnine, corrosive sublimate, or prussic acid without the written prescription of a physician, he shall keep a record of

Persons selling arsenic, &c., to keep record, &c. Purchasers

who give false  
name, &c.  
G. S. 166, § 7.

the date of such sale, the article, the amount thereof sold, and the person or persons to whom delivered; and for each neglect he shall forfeit a sum not exceeding fifty dollars. Whoever purchases deadly poisons, as aforesaid, and gives a false or fictitious name to the apothecary or other person, shall be punished by fine not exceeding fifty dollars.

Damaged fish  
not to be sold or  
exported, &c.  
Penalty.  
G. S. 49, § 57.

85. Whoever sells within this state or exports therefrom tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, shall forfeit the sum of ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity; and upon a trial in such case the burden of proof shall be upon the defendant to show for what purpose such fish was so exported or sold.

#### ORDINANCE.<sup>1</sup>

The board of  
aldermen shall  
constitute the  
board of health.  
May 21, 1863.

SECTION 1. The board of aldermen shall constitute the board of health of the city, for all purposes, and shall exercise all the powers vested in, and shall perform all the duties prescribed to, the city council as a board of health;<sup>2</sup> subject only to any limitations and restrictions contained in the ordinances, regulations, and orders of the city council.

<sup>1</sup> An ordinance relating to the public health, passed May 21, 1863.

This ordinance was published two successive weeks in the *Boston Daily Advertiser* of June 17 and 24, and in the *Boston Post* of June 18 and 25, 1863, as required by sect. 70 of the Statutes, on p. 302, *ante*.

<sup>2</sup> By the seventeenth section of the act of 1821, establishing the City of Boston, and confirmed by the act of 1854, all the power and authority by law vested in the board of health for the town of Boston, at the time of the passage of the said act, relative to the quarantine of vessels, and relative to every other subject whatsoever, was transferred to and vested in the city council, to be carried into execution by the appointment of health commissioners, or in such other manner as the health, cleanliness, comfort, and order of the said city might in their judgment require, subject to such alterations as the legislature might from time to time adopt. And the supreme judicial court, in the case of *Baker v. City of Boston*, 12 Pick. 184, held that it was not only the right but the duty of the city government of Boston, so far as they may be able, to remove every nuisance which may endanger the health of the citizens. And they have necessarily the power of deciding in what manner this shall be done, and their decision is conclusive, unless they transcend the powers conferred on them by the City Charter. Police regulations to direct the use of private property so as to prevent its being pernicious to the citizens at large, are not void, although they may in some measure interfere with private rights

SECT. 2. It shall be the duty of the mayor to be vigilant and active in protecting the public health; to see that the laws and ordinances in relation to the same are enforced; to communicate his views to the board of aldermen or the city council from time to time as he may deem expedient; and he shall have power to call upon the police and the various city officers to aid him in the performance of these duties.

The mayor shall protect the public health, and enforce the laws and ordinances.  
May 21, 1863.

## SUPERINTENDENT OF HEALTH.

SECT. 3. There shall be elected annually, on the first Monday of February or within sixty days thereafter, by concurrent vote of the two branches of the city council, a superintendent of the health department, who shall hold his office for one year from the first Monday of April in the year in which he shall be elected, and until a successor is elected and qualified, or he is removed. He shall be removable at the pleasure of the city council, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation as the said council may from time to time determine.

Superintendent of health to be elected.  
Ibid.

SECT. 4. The said superintendent is authorized to appoint an assistant, to act under his control and direction, who shall be approved by the board of aldermen, and who shall receive such compensation as the city council may from time to time determine. The said assistant may be removed at any time by the said superintendent or the board of aldermen.

Superintendent may appoint assistant.  
Ibid.

SECT. 5. The execution of the laws and ordinances relating to the subject of internal health shall be under the superintendence of the said superintendent and his assistant; and it shall be their duty, and each of them shall have power, to enforce all laws, ordinances, regulations, and orders relating to causes of sickness, nuisances, and sources of filth existing within the city, except as is otherwise provided in the ordinances of the city, subject always to the direction, authority, and control of the board of aldermen and of the board of health for the time being;

To execute all laws and ordinances on subject of health.  
Ibid.

without providing for compensation. The property of a private individual may be appropriated to public use in connection with the measures of municipal regulation, and in such case compensation must be provided for, or the appropriation will be unconstitutional and void. *Baker v. City of Boston*, 12 Pick. 184. See Stat. 1821, c. 110, § 17; 1854, c. 448, § 40.

May 21, 1863. and he shall perform any other services that may be required of him by the said boards, or either of them. And he may, under the direction of the committee on internal health, abate any nuisance without an order from the board of aldermen therefor, when the person whose duty it is to abate the same has been legally notified to abate it and has neglected so to do, after the time fixed therefor in the notice served on him, and when in the judgment of said superintendent the exigency for the immediate abatement thereof is so great that delay for the action of the board of aldermen would be dangerous to the public health.

To give bond.  
Ibid.

SECT. 6. The said superintendent of the health department shall give bond with one or more sureties, to the approbation of the board of aldermen, with condition that he shall faithfully perform all the duties of his office, and account for all moneys entrusted to him, and that he will not, directly or indirectly for himself or others, or by others in trust for him, or on his account, have any interest or concern in any purchase, lease, contract, or agreement to be made in pursuance of this ordinance.

Duties of  
superintendent.  
Ibid.

SECT. 7. The said superintendent shall attend at his office a portion of each day. He shall keep a record of all his proceedings, and a set of books, in which shall be entered, under appropriate heads, the receipts and expenditures in his department, with the names of all persons who have furnished materials, and of all workmen, and the amount paid to each individual; and he shall make a quarterly report thereof to the city council. On or before the tenth day of January, annually, he shall make a report to the city council containing a general statement of the expenses of his department during the preceding year, the amount expended in each branch thereof, and such other information as he may consider desirable, together with a schedule of the property under his charge belonging to the city, and the value thereof.

To make report  
to city council.  
Ibid.

To report an  
estimate to  
auditor of the  
wants of his  
department.  
Ibid.

SECT. 8. He shall report annually, on or before the fifteenth day of February, to the auditor of accounts, a detailed estimate of the wants of his department for the next financial year; which estimate shall contain such a subdivision of the amount

to be expended as shall give a good idea of the various necessities of the department. May 21, 1863.

SECT. 9. He shall have, under the direction and control of the board of aldermen, the care and superintendence of the city teams and stables, and shall make all necessary arrangements for cleaning the streets, disposing of manure, and removing house dirt and house offal. He shall, from time to time, furnish to the superintendent of streets such carts and horses as he may need, and they shall be charged to the department of paving and repairs of streets.

To have charge of city teams and stables.  
Ibid.

Furnish team for streets.  
Ibid.

SECT. 10. When the superintendent of health shall sell any articles or materials belonging to the city, or shall do, or cause to be done, any work for any individual from which money shall become due to the city, the said superintendent shall enter in books to be kept for that purpose all such sales and work done, with the price thereof, and shall forthwith make out bills for the same and deliver them to the city treasurer for collection, and the said treasurer shall forthwith demand payment of the said bills, and in case any bills or dues under this ordinance shall remain unpaid at the expiration of three months after demand for payment as aforesaid, the said treasurer shall deliver the same to the city solicitor for legal proceedings; but if at any time the mayor shall be satisfied that the interests of the city require it, he may cause legal proceedings to be had at any time.

To make and deliver all bills for materials sold and work done to the city treasurer for collection.  
Ibid.

SECT. 11. The pay-rolls of the laborers employed under the direction of the superintendent of health shall be made up and certified by the said superintendent, and upon being duly allowed and audited shall be paid by the said city treasurer, at such times and places as he shall appoint, and he may employ a clerk for that purpose.

To make up pay rolls of laborers.  
Ibid.

#### INTERMENT OF THE DEAD.

SECT. 12. The department relative to the interment of the dead shall be under the superintendence of the city registrar, whose duty it shall be to carry into execution all laws, ordinances, regulations, and orders relating to the interment of the

Interment of dead shall be under superintendence of city registrar.  
Ibid.

May 21, 1863. dead, subject always to the direction, authority, and control of the board of aldermen.

He shall have care of burying-grounds. *Ibid.* SECT. 13. The said registrar shall have the care and custody of all the burying-grounds in the city, and it shall be his duty to keep the same in good repair and secured from trespassers, and to prevent any and all nuisances therein.

May give licenses for burials, &c. *Ibid.* SECT. 14. He is authorized to give licenses for burials, and for the removal of dead bodies from the city, and to point out the place, depth, width, and range of all graves to be dug in the several burying-grounds, and to declare the limits in such grounds within which no grave shall be dug, which in his judgment would be dangerous to the public health.

Dead bodies shall not be buried without license. *Ibid.* 16 Pick. 121. SECT. 15. No person shall bury or inter, or cause to be buried or interred, any dead body, without having first obtained a license so to do from the city registrar, or in violation of any direction or order of the said registrar, given in accordance with the preceding section.

Graves shall be three feet deep. May 21, 1863. SECT. 16. No person shall inter, or cause to be interred, any dead body in a grave which shall be less than three feet deep from the surface of the ground surrounding the grave to the top of the coffin.

Funeral cars to be provided, &c. *Ibid.* SECT. 17. The said registrar shall provide one or more funeral cars, for purposes connected with his department, and have the care and custody of the same, and shall cause them to be kept clean and in good repair, and permit no person to use them except funeral undertakers appointed by the mayor and aldermen, as provided in the following section. Funeral undertakers may use their own cars, which shall be subject to the following regulations, viz : Said cars to be first approved by the board of aldermen, numbered and registered in the office of the city registrar, in a book kept for that purpose, and a license fee of one dollar paid thereon in the month of May, annually, which sum shall be paid into the city treasury. No subsequent alteration in the form or general appearance of such cars shall be made without the permission of the board of aldermen.

Other cars may be licensed. *Ibid.* SECT. 18. On the first Monday of February annually, or within sixty days thereafter, the mayor, by and with the advice

Funeral undertakers to be appointed.

and consent of the aldermen, shall appoint for a period of one May 21, 1863. year, from the first Monday of April in the year in which they shall be appointed, such a number of funeral undertakers as he may deem expedient, who shall be responsible for the decent, orderly, and faithful management of the funerals undertaken by them, and for a strict compliance with the ordinances of the city in this behalf. Each undertaker may employ porters, of a discreet Porters. Ibid. and sober character, to assist him, and he shall be accountable for their conduct; said undertakers and porters shall always be removable at the pleasure of the mayor. No person not No other person shall manage a funeral. Ibid. 16 Pick. 121 appointed as aforesaid shall undertake the management of any funeral.

SECT. 19. No person shall bury or inter, or cause to be buried or interred, any dead body at any other time of the day Time for burials. May 21, 1863. than between sunrising and sunsetting, except when otherwise permitted by the city registrar. No bell shall be tolled in the city of Boston, at any funeral, without a special permit therefor Tolling of bells forbidden. Ibid. from the mayor, who is hereby authorized to suspend the usual ringing of any bell, when the illness of any person in the neighborhood thereof may require such suspension. The corpse of every Funeral car to be employed. Ibid. person of ten years of age and upward shall be conveyed to the grave or tomb in a funeral car, to be drawn by not more than two horses; *provided, however*, that, on extraordinary occasions, permission may be obtained from the mayor, on application for that purpose, to dispense with any of the provisions of this section.

SECT. 20. No grave shall be opened or dug in any of the burying-grounds in the city, excepting at East Boston and South Boston, unless by permission of the board of aldermen or the city registrar. No grave to be dug without permission. Ibid.

SECT. 21. No conductor on any railroad, no master of any steamboat or other vessel, no hack driver, or other person, shall remove or cause to be removed, from the city, any dead body, No dead body to be removed without license Ibid. unless by a written license of the city registrar.

SECT. 22. No person shall remove any dead body, or the remains of any such body, from any of the graves or tombs in this city, or shall disturb any dead body in any tomb or grave No dead body to be disturbed without license Ibid. without the license of the city registrar.

No grave, &c.,  
to be opened  
except, &c.,  
without per-  
mission.  
May 21, 1863.

SECT. 23. No grave or tomb shall be opened from the first day of June to the first day of October, except for the purpose of interring the dead, without the special permission of the board of aldermen or the city registrar.

Fees of under-  
takers, &c.  
Ibid.

SECT. 24. For services rendered in accordance with the provisions of this ordinance, undertakers shall be entitled to receive the following fees, and no more, to wit: For digging a grave eight feet deep, and covering the same, two dollars and fifty cents; for digging a grave six feet six inches deep, one dollar and fifty cents; for digging a grave five feet deep, one dollar and twenty-five cents; and for one four feet deep, one dollar; and when the ground shall be frozen, the charge for digging graves may be augmented at the discretion of the city registrar. For opening and closing a tomb, seventy-five cents; for placing a corpse in a coffin, when requested, and removing the same down stairs, one dollar; for carrying a corpse from the house to the car, and from the car to the grave, tomb, or vault, and placing the same therein, including the use of car, and the assistance of funeral porters, four dollars and fifty cents; and when the interment takes place out of the city, thirty-five cents in addition for each mile beyond the limits of the city shall be allowed; and for each horse more than one used on the car, there may be an additional charge of seventy-five cents. For the burial of children under ten years of age, to wit: for digging a grave three and a half feet deep, seventy-five cents; for services at the house one dollar; for carrying the corpse to the carriage, and from the carriage to the place of deposit, and interring the same, one dollar; and for the use of a pall, twenty-five cents. And when a corpse shall be carried into a church for a funeral service, the undertaker may make an additional charge of two dollars. For lighting a cemetery, one dollar. In cases of disinterring and removing bodies from graves or tombs, the fees to be charged therefor shall be in accordance with the amount and the nature of the services rendered. No undertaker shall remove from the city any corpse until he shall present his bill for the services rendered under this ordinance to the city registrar for his approval; and no bill for the interment of any

Burials out of  
the city.  
Ibid.

Fees, &c., for  
children.  
Ibid.

Fees for disin-  
terring and  
removal.  
Ibid.

corpse in the city shall be presented for payment before it shall May 21, 1863.  
be approved by the city registrar.

SECT. 25. The board of aldermen are authorized to make Board of aldermen may make regulations. Ibid.  
and adopt any regulations in relation to the interment of the  
dead which they may deem expedient, not inconsistent with the  
foregoing provisions, and subject to the approval of the mayor.

## CITY PHYSICIAN.

SECT. 26. There shall be elected annually, on the first Monday of February or within sixty days thereafter, by concurrent vote of the two branches of the city council, a city physician City physician to be elected ; tenure of office. Ibid.  
who shall hold his office for one year from the first Monday of April, in the year in which he shall be elected, and until a successor is elected or he is removed. He shall be removable at the pleasure of the city council, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation as the said council may from time to time determine.

SECT. 27. On the first Monday in February annually, or within sixty days thereafter, there shall be elected, by concurrent vote of the city council, five consulting physicians, whose Consulting physicians to be elected. Ibid.  
tenure of office shall be the same as that of the city physician, and whose duty it shall be, in case of an alarm of any contagious or other dangerous disease occurring in the city or neighborhood, Their duties. Ibid.  
to give to the mayor or either board of the city council all such professional advice and information as they may request, with a view to the prevention of such disease, and, at all convenient times, when requested, to aid and assist them with their counsel and advice in all matters that relate to the preservation of the health of the inhabitants.

SECT. 28. The city physician shall examine into all nuisances, sources of filth, and causes of sickness which may be on City physician shall examine into nuisances &c. Ibid.  
board of any vessel at any wharf within the harbor of Boston,  
or which may have been landed from any vessel on any wharf,  
or other place, when notified of the same ; and, under the  
direction of the board of aldermen, shall cause the same to be  
removed or destroyed.

City Physi-  
cian's office.  
May 21, 1863.

He shall vac-  
cinate inhab-  
itants who  
apply, &c.  
Ibid.

Proviso.  
Ibid.

To keep and  
supply vaccine  
virus.  
Ibid.

To examine  
cases of disease  
when called  
upon by mayor  
and aldermen,  
&c.  
Ibid.

To attend at  
jail, &c.  
Ibid.

To keep record

SECT. 29. There shall be provided by the city council a suitable office for the city physician, free of expense to him ; at which place he shall attend at such times as the board of aldermen may direct ; and he shall vaccinate, without charge, any inhabitant of Boston, not previously vaccinated, who may apply for that purpose ; he shall also give certificates of vaccination to such children as have been vaccinated, and shall require such certificates for admission to the public schools ; *provided*, that no person shall be entitled to the benefits of this section who shall wilfully neglect or refuse to return to the office of the city physician, when requested by him, for the purpose of enabling him to ascertain the effect of the vaccination, or to renew the necessary supply of virus for the use of said office.

SECT. 30. He shall always have on hand, as far as is practicable, a sufficient quantity of vaccine virus, and he shall supply the physicians of the city institutions, and the dispensary, with the same, without expense to them.

SECT. 31. He shall examine all cases of disease within the city, and inquire into all sources of danger to the public health whenever he shall be called upon by the mayor, the board of aldermen, the board of health for the time being, or the overseers of the poor, and shall give his professional services and advice therein, and at all times when required by either of said persons or boards.

SECT. 32. The city physician shall attend upon all cases of disease, and perform all the professional services that may be required in the jail, city prison under the court house, in the city temporary home, and in the several police stations in the city, with the exception of those at East and South Boston. He shall examine all candidates for appointment on the police force, when requested by the mayor, board of aldermen, or chief of police ; examine into the condition of all officers absent from duty from disability ; also all cases of accidental injury whereby the city may become liable ; and report to the city registrar, when requested by him, the causes of death of all persons dying with no physician in attendance.

SECT. 33. He shall keep a record of all cases of small-pox

or other malignant diseases, attended by him under this ordinance, and shall make such reports thereof to the board of aldermen as they may from time to time direct.

of cases of  
small-pox, &c.  
May 21, 1863.

SECT. 34. He shall also keep a correct record of all the doings of his office, and shall make a regular return thereof to the city council as often as once in three months,

To keep record  
of doing of his  
office.  
Ibid.

SECT. 35. Whenever any vessel shall arrive in the harbor of Boston, between the first day of April and the fifteenth day of November in any year, having on board any hides, hide cuttings, skins, rags, or fruit, it shall be the duty of the harbor master to give immediate notice thereof to the city physician.

Harbor master  
shall report to  
city physician  
vessels having  
hides, &c.  
Ibid.

SECT. 36. It shall be the duty of every master and consignee of any vessel, arriving within the time fixed in the preceding section, and containing the articles therein named, or any of them, to give immediate notice of the arrival of such vessel to the harbor master or the city physician.

Master of such  
vessel shall give  
notice to harbor  
master or city  
physician.  
Ibid.

#### PORT PHYSICIAN.

SECT. 37. There shall be elected annually on the first Monday in February, or within sixty days thereafter, and whenever a vacancy occurs, by concurrent vote of the two branches of the city council, a port physician, who shall hold his office for one year from the first Monday of April in the year in which he shall be elected, and until a successor is elected or he is removed. He shall be removable at the pleasure of the city council, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation as the said council may from time to time determine.

Port physician  
to be chosen.  
Ibid.

SECT. 38. The said port physician shall reside at Deer Island, which is hereby made and declared to be the place of quarantine for the port of Boston. He shall be superintendent of, and physician to the quarantine hospital at Deer Island, and physician to all the city establishments which are or may be located upon said island, which shall not be otherwise provided for by the city council. He shall also perform all such services as may be required of him by the mayor, or the board of aldermen, in relation to quarantine.

To reside at  
Deer Island  
and superintend  
quarantine hos-  
pital, &c.  
Ibid.

To keep record  
of cases of  
small-pox, &c.  
May 21, 1863.

SECT. 39. The said port physician shall keep a record of all cases of small-pox or other malignant diseases, attended by him under this ordinance, and shall make such reports thereof to the mayor and to the board of aldermen as they may from time to time direct.

To keep record  
of his other  
doings.  
Ibid.

SECT. 40. The said port physician shall also keep a correct record of his other doings, and shall make a regular return thereof to the city council as often as once in three months.

#### VAULTS AND DRAINS.

Owner, &c.,  
of dwelling-  
houses, &c.,  
shall furnish  
them with suit-  
able drains and  
privies.  
Ibid.

SECT. 41. The owner, agent, occupant, or other person having the care of any tenement used as a dwelling-house, or of any other building with which there is a privy connected and used, shall furnish the same with a sufficient drain under ground to carry off the waste water, and also with a suitable privy, the vault of which shall be sunk under ground and built in the manner hereinafter prescribed, and of a capacity proportionate to the number of inhabitants of such tenement, or of those having occasion to use such privy. Any such owner, agent, occupant, or other person who shall neglect to comply with the provisions of this section, shall be liable to a penalty for each and every week during which such offence shall continue.

Penalty.  
Ibid.

How vaults and  
privies shall be  
constructed.  
Ibid.

SECT. 42. All vaults and privies shall be so constructed, that the inside of the same shall be at least two feet distant from the line of every adjoining lot, unless the owner of said adjoining lot shall otherwise agree and consent; and also from every street, lane, alley, court, square, or public place, or public or private passageway. Every vault shall be made tight, so that the contents thereof cannot escape therefrom, except as is provided in the following section.

Vaults may be  
connected with  
common sewers  
by permission  
of superintend-  
ent of sewers.  
Ibid.

SECT. 43. The superintendent of sewers, under the direction of the board of aldermen, is authorized to permit, under such restrictions, and on the payment of such sum, not exceeding thirty dollars, as they shall deem expedient, the construction of sufficient passageways or conduits under ground for the pur-

pose of conveying the contents of any of the vaults aforesaid May 21, 1863.  
into any common sewer or drain.

SECT. 44. If the board of aldermen shall at any time be  
satisfied that any tenement, used as a dwelling-house, or any  
such other building as is mentioned in the forty-first section, is  
not provided with a suitable privy, vault, and drain, or either  
of them, as aforesaid, they may give notice in writing to the  
owner, agent, occupant, or other person having the care thereof,  
or in case neither the owner, agent, or person having the care  
thereof is an inhabitant of the city, public notice in two news-  
papers printed in Boston, requiring such owner, agent, occupant,  
or other person, within such time as they shall appoint, to cause  
a proper and sufficient privy, vault, and drain, or either of  
them, to be constructed for such tenement or other building;  
and in case of neglect or refusal to obey such notice the board  
of aldermen shall have power to cause such privy, vault, and  
drain to be made for such tenement or other building, the ex-  
pense of which shall be paid by such owner, agent, occupant,  
or other person; and in case any such drain, vault, or privy is  
constructed as aforesaid, for the use of more than one house,  
then the owner, agent, occupant, or other person having the  
charge of each of such houses, shall be liable to pay a pro-  
portional part of such expense.

SECT. 45. Whenever any vault, privy, or drain shall be-  
come offensive or obstructed, the same shall be cleansed and  
made free, and the owner, agent, occupant, or other person  
having charge of the land in which any vault, privy, or drain  
may be situated, the state or condition of which shall be in vio-  
lation of the provisions of this ordinance, shall remove, cleanse,  
alter, amend, or repair the same within such reasonable time,  
after notice in writing to that effect given by the superintendent  
of health or his assistant, as shall be expressed in such notice.  
In case of neglect or refusal so to do, the superintendent of  
health may, with the advice and consent of the committee on  
internal health, cause the same to be removed, altered, amended,  
or repaired as he may deem expedient, at the expense of the  
owner, agent, occupant, or other person as aforesaid, and such

Proceedings  
where a suitable  
privy, vault,  
and drain is not  
constructed.  
Ibid.

Offensive  
vaults, drains,  
&c., to be re-  
paired and  
cleansed.  
Ibid.

May 21, 1863. owner, occupant, or other person shall also be liable to such penalties as are prescribed by law or ordinance.

Regulations as  
to cleansing  
vaults and  
privies.  
Ibid.

SECT. 46. No vault or privy shall be emptied without a permit from the superintendent of health or his assistant; nor in any other mode or at any other time than he shall direct and appoint; conformable to such regulations and contracts as the board of aldermen from time to time shall make on the subject, and always at the expense of the owner, agent, occupant, or other person having charge of the tenement in which such vault is situated.

Applications  
for cleansing  
vaults.  
Ibid.

SECT. 47. Books shall be kept in some convenient places under the charge of the superintendent of health, in which shall be entered all applications for opening and cleansing vaults; said entries to specify the number of loads, if less than the whole contents of the vault, to be removed; and the same shall receive attention in the several wards in the order in which they are made, so far as practicable. The board of aldermen shall from time to time determine the sum to be paid, by persons who shall make such applications between the fifteenth day of September and the first day of March; and all persons making such application between the first day of March and the first day of June shall be charged and shall pay double the amount so determined; and all persons making such application between the first day of June and the fifteenth day of September, shall be charged and shall pay three times the amount so determined. And in order to ascertain the proper sum to fix as a minimum price, for the removal of the contents of the vaults as hereinbefore provided, the committee on internal health shall advertise for proposals for such service, for a term not exceeding three years; and shall report to the board of aldermen a contract or contracts therefor for their approval.

What sums  
shall be paid  
therefor.  
Ibid.

Further  
regulations.  
Ibid.

SECT. 48. No vault shall be opened between the first day of June and the fifteenth day of September, in each year, unless, on inspection caused to be made, the superintendent of health or his assistant shall be satisfied of the necessity of the same for the health or comfort of the inhabitants. In such case no more of the contents shall be taken away than they

or either of them shall deem to be absolutely necessary for May 21, 1863.  
 present safety and relief, and such precautions shall be used  
 relative to the prevention of any offensive effluvia, as they or  
 either of them shall direct, at the expense of the owner, agent,  
 occupant, or other person having charge of the premises.

SECT. 49. All waste water shall be conveyed through suffi- Waste water  
to be carried  
off in drains.  
Ibid.  
 cient drains, under ground, to a common sewer, or to such res-  
 ervoir, sunk under ground, as shall be approved by the super-  
 intendent of sewers. And no person shall suffer any waste or  
 stagnant water to remain in any cellar, or upon any lot or  
 vacant ground by him owned or occupied.

SECT. 50. Whenever, upon due examination, it shall appear Board of alder-  
men may re-  
move persons  
from tenements  
where too  
numerous or  
unprovided  
with vaults, &c.  
Ibid.  
 to the board of aldermen, that the number of persons occupy-  
 ing any tenement or building in the city is so great as to be the  
 cause of nuisance and sickness, and the source of filth; or that  
 any tenements or buildings are not furnished with vaults con-  
 structed according to the provisions of this ordinance, and suffi-  
 cient privies and drains under ground for waste water, they  
 may thereupon issue their notice, in writing, to such persons or  
 any of them, requiring them to remove from and quit such tene-  
 ment or building within such time as the said board shall deem  
 reasonable. And if the person or persons so notified, or any  
 of them, shall neglect or refuse to remove from and quit such  
 tenement or building within the time mentioned in such notice,  
 the board of aldermen are hereby authorized and empowered  
 thereupon forcibly to remove them; and such person or persons  
 shall be liable to a penalty for such neglect or refusal, and for  
 the expense of their removal.

#### HOUSE OFFAL, ASHES, ETC.

SECT. 51. All house offal, whether consisting of animal or House offal;  
how to be kept.  
Ibid.  
 vegetable substances, shall be placed in suitable vessels, and no  
 ashes or other refuse matter shall be mingled therewith; and the  
 same shall be kept in some convenient place, to be taken away  
 by the city scavengers, which shall be done as often as twice in  
 each week.

SECT. 52. No person shall remove, or carry in or through Manner of its

removal. Not  
to be removed  
without license.  
May 21, 1863.

any of the streets, squares, courts, lanes, avenues, places, or alleys of the city of Boston any house dirt or house offal, animal or vegetable, or any refuse substances from any of the dwelling-houses or other places in the city, unless such person so removing or carrying the same, and the mode in which the same shall be removed or carried, shall have been expressly licensed by the board of aldermen, or by the permit of the superintendent of health or his assistant, upon such terms and conditions as they shall deem the health and interest of the city require. But all the ashes and cinders made from steam engines, or steam boilers, forges or furnaces, used for mechanical purposes, shall be removed at the expense of the parties occupying the building, or the owners thereof, and at such times and in such manner as the superintendent of health shall direct.<sup>1</sup>

No filth shall  
be thrown out  
into streets, &c.  
Ibid.

SECT. 53. No person, without the license of the board of aldermen, shall throw into or leave in or upon any street, court, square, lane, alley, wharf, public square, public enclosure, vacant lot, or any pond or body of water within the limits of the city, any dead animal, dirt, sawdust, soot, ashes, cinders, shavings, hair, shreds, manure, oyster, clam or lobster shells, waste water; rubbish or filth of any kind, or any refuse animal or vegetable matter whatsoever. Nor shall any person throw into or leave in or upon any dock, flats, or tide water within the jurisdiction of the city, any dead animal or other foul or offensive matter, except as provided in the fifty-sixth section of this ordinance.

Penalty.  
Ibid.

SECT. 54. If any of the substances mentioned in the preceding section shall be thrown or carried from any house, warehouse, shop, cellar, yard, or other place, or left in any of the places specified in the preceding section, the owner and occupant of such house, warehouse, shop, cellar, yard, or other place as aforesaid, and the person who actually threw, carried, or left the same, or who caused the same to be thrown, carried, or

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<sup>1</sup> A by-law of Boston prohibiting any person not duly licensed therefor by the board of aldermen from removing the house dirt and offal from the city, is valid, and binds a stranger coming within the city. *Vandine's case*, 6 Pick. 187.

left, shall severally be held liable for such violation of this ordinance; and all such substances shall be removed from the place where they have been so thrown or left as aforesaid, by such owner or occupant, or other person, within two hours after personal notice in writing to that effect, given by the superintendent of health or his assistant, or such removal shall be made under the direction of either of the officers above named, and the expense thereof borne by such owner or occupant. May 21, 1863.

SECT. 55. All dirt, sawdust, soot, ashes, cinders, shavings, hair, shreds, manure, oyster, clam, or lobster shells, waste water, or any animal or vegetable substance, rubbish, or filth of any kind, in any house, warehouse, or other building, cellar, yard, unaccepted street, alley-way, or other place which the board of aldermen shall deem injurious to the health of the city, shall be removed by the owner or occupant of such house, warehouse, other building, cellar, yard, unaccepted street, alley-way, or other place where the same shall be found within twenty-four hours, or such other time as the board of aldermen shall deem reasonable, after notice in writing to that effect, served personally upon the owner or occupant, or their authorized agent, by any person competent to serve a notice in a civil suit, or left at the owner, occupant, or agent's last and usual place of abode, if the same be known and be within the state; or such removal shall be made under the direction of the board of aldermen, and the expense thereof borne by such owner or occupant; and, in addition, they or either of them shall be liable to a penalty. Filth, &c., may be removed by order of board of aldermen. Ibid.

SECT. 56. No person shall bring into the city for sale, or shall sell or offer for sale any halibut, cod, haddock, or mackerel, until the same shall have been cleansed of their entrails and refuse parts; and such entrails and refuse parts shall be thrown overboard, below low-water mark; and shall never be kept beyond the flowing of the tide next after such fish are so cleansed; and until so thrown overboard they shall be kept, in a safe manner, on board the vessels or boats in which the fish were brought. And no person shall sell or deliver from any stall, fish box, cart, or other place, any fish of any kind except flounders, smelts, and other small fish, salmon and shad, until Sale and keeping of fish regulated. Ibid.

May 21, 1863.

the same shall have been cleansed of their entrails and refuse parts ; and such entrails and refuse parts shall be kept in some tight vessel until the same shall be thrown into the sea below low-water mark, which shall be done within twenty-four hours after the fish shall have been so cleansed. And no person shall sell or offer for sale in the city fish of any kind, unless the same be kept in covered stalls, fish boxes, or other houses, which shall always be clean and in good order, or in clean covered carts or boxes, and well secured from the rays of the sun.

Fish, &c., not  
to be sold, &c.,  
in certain  
streets, except,  
&c.  
Ibid.

SECT. 57. No person shall sell or offer for sale in the street, any fish, lobsters, oysters, or shell-fish of any kind in Market Square, Merchants Row, South Market Street, North Market Street, or the street running from Long Wharf to Clinton Street, or in that part of Washington Street between Hayward Place and Kneeland Street, those parts of Kneeland, Beach, and Essex Streets between Harrison Avenue and Washington Street, nor in those parts of Boylston and Eliot Streets between Tremont and Washington Streets, except by permission of the board of aldermen, and on such conditions as they shall order.

Vegetables to  
be divested of  
parts not used  
for food.  
Ibid.

SECT. 58. No person shall bring into the city, or have in his possession for sale, or shall sell or offer for sale within the city, any vegetables whatever, (excepting green peas and beans in the pods, and green corn in the inner husks,) which have not previously been divested of such parts or appendages as are not commonly used for food ; and no person shall have such parts or appendages in his possession in any public or private market, or in any store, shop, or other place, or in any cart or vehicle in said city used or occupied for the sale of vegetables or other articles of food.

Swine and  
goats not to be  
kept without  
license.  
Ibid.

SECT. 59. No swine or goats shall be kept within the limits of the city without the license of the board of aldermen, and only in such place and manner as they shall direct.

Horses and car-  
riages not to be  
washed in  
streets, &c.  
Ibid.

SECT. 60. The owners and occupants of livery and other stables within the city shall not wash or clean their carriages or horses, or cause them to be washed or cleaned in the streets or public ways, or otherwise encumber the same ; they shall

keep their stables and stable yards clean, and shall not permit more than two cart loads of manure to accumulate and remain in or near the same at any one time between the first day of May and the first day of November; nor shall they within that period remove any manure, nor cause or suffer the same to be removed, except between the hour of twelve at night and two hours after sunrise.

SECT. 61. No person shall bring into the city, by land or water, or land on any wharf or other place any decayed or damaged grain, rice, coffee, fruit, potatoes, or other vegetable product, or any tainted or damaged meat or fish, without a permit therefor from the board of aldermen or the superintendent or his assistant, and in such a manner as they shall direct.

Damaged grain, meal, &c., not to be landed without a permit. Ibid.

SECT. 62. Every person offending against any of the provisions of this ordinance, in relation to which a penalty is not prescribed by the laws of the commonwealth, shall forfeit and pay a sum not less than five dollars nor more than fifty dollars for each offence.

Penalty for offences against this ordinance. Ibid.

SECT. 63. All ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.<sup>1</sup>

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## HISTORY.

### STATUTE.

Cities and towns may appropriate money for histories.

The several cities and towns may vote and grant such sums as they may judge necessary for procuring the writing and publishing of their town histories.

Cities, &c., may appropriate money for histories. G. S. 18, § 10.

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<sup>1</sup> From time to time there have been many special laws passed by the legislature relating to the preservation of the public health in the town and city of Boston, the several provisions of which appear to have been incorporated in the General Statutes, to be found on pp. 290-306, *ante*. The several laws may be found in Special Laws, as follows, viz: 1799, vol. ii. p. 307; 1803, vol. iii. p. 211; 1804, vol. iii. p. 385; 1806, vol. iv. p. 1; 1816, vol. v. p. 137; 1847, vol. viii. p. 798.

## CITY HOSPITAL.

## STATUTES.

1. The city authorized to establish and maintain a hospital for reception of poor persons.
2. The city council authorized to make ordinances, rules and regulations for appointment of trustees, &c.
3. Hospital not to be located within three hundred feet of school-house or church.

## ORDINANCE.

1. How first board of trustees shall be elected. Tenure of office. After first election how trustees shall be elected. Tenure of office. May be removed. Vacancies, how filled. Organization. Quorum.
2. Trustees may appoint physician and surgeon, and other officers; fix compensation, make rules and regulations, subject to approval of city council.
3. Trustees shall annually elect a superintendent, city council shall fix his compensation; how removed.

4. Powers and duties of superintendent.
5. Trustees to have charge of any building for admission of persons having small-pox, &c.; may make rules, &c., respecting the same.
6. Trustees may make repairs and alterations in the buildings, and improvements on the lands.
7. Hospital only intended for temporary relief; may admit persons who are able to make compensation, &c.
8. Trustees shall make annually to the auditor an estimate of money needed for ensuing year; shall expend no greater sum than shall be appropriated. Estimate to be accompanied by a report from the superintendent.
9. Moneys received by gift or bequest how to be invested by trustees.
10. Such moneys, unless otherwise appropriated by donors, shall constitute a permanent fund.
11. Duties of trustees in relation to all property and funds donated.

STATUTES.<sup>1</sup>

City authorized to establish, &c., hospital for poor persons. 1858, 113, § 1.

1. The city of Boston is hereby authorized to erect, establish, and maintain a hospital for the reception of persons who by misfortune or poverty may require relief during temporary sickness.

<sup>1</sup> The plan of a city hospital to which poor persons, strangers, and others in moderate circumstances could be admitted, and where they could be treated with little or no expense, had been often entertained by the city councils of Boston within the last ten years, but no definite consideration was given to the subject, or maturity to the plan, until the decease of Elisha Goodnow, of Boston, in June, 1851, who, in his will, dated July 12, 1849, bequeathed to the city of

2. The city council of said city shall have power to make such ordinances, rules and regulations, as they may deem expedient, for the appointment of trustees, and all other necessary officers, agents, and servants, for managing the said hospital.

City Council may make ordinances, &c., for appointment of trustees, &c. 1858, 113, § 2.

3. Said hospital shall not be erected or located within three hundred feet of any school-house or church now built.

Hospital not to be located near school house or church. Ibid. § 3.

#### ORDINANCE.<sup>1</sup>

SECTION 1. In the month of January, eighteen hundred and sixty-three, the city council shall proceed to elect by concurrent vote eight suitable persons to be a board of trustees of the city hospital, of whom three shall be chosen from the citizens at large, two shall be members of the board of aldermen, and three members of the common council. The persons elected at large shall hold their offices one for one year, one for two years, and the third for three years, and the members chosen from the city council for one year, from the first day of said January and until others are chosen respectively in their

First board of trustees; how elected. Dec. 23, 1862. Tenure of office. Ibid.

Boston property to the amount of twenty-five thousand dollars towards a city hospital, to be located in the eleventh or twelfth ward. After a certain system for the management of a city hospital had been matured by the city government, the legislature, by chap. 113 of the Acts of 1858, authorized the city to erect and maintain such an institution, and to appoint a board of trustees for its management. A site was accordingly selected for the hospital in the eleventh ward of the city, comprising the square bounded by Harrison Avenue, Concord, Springfield, and Albany Streets, — and the city council, in 1861, authorized suitable buildings to be erected thereon. An ordinance providing for a board of trustees to manage the hospital was passed December 23, 1862, and the following persons constituted the first board under said ordinance, having been chosen in January, 1863: *Aldermen* — Thomas C. Amory, Jr., Otis Norcross. *Common Council* — Lucius A. Cutler, Joseph Buckley, David H. Coolidge. *At large* — Theodore Metcalf,<sup>2</sup> for three years; Sumner Crosby, for two years, and William R. Lawrence, for one year.

For additional particulars see City Documents, 1849, No. 56; 1857, Nos. 37, 78; 1860, Nos. 63, 67; 1861, Nos. 34, 69; and 1862, No. 75.

<sup>1</sup> An ordinance relating to the city hospital passed December 23, 1862, and amended June 24, 1863.

<sup>2</sup> Mr. Metcalf was chosen in place of Andrew Carney, who declined accepting the trust.

After first election, how trustees shall be elected.  
Dec. 23, 1862.

Tenure of office; removal, vacancy.  
Ibid.

Organization; quorum.  
Ibid.

Trustees may appoint physician and other officers; fix compensation, make rules, &c.  
Ibid.

Trustees to elect superintendent; his compensation, removal.  
Ibid.

Powers and duties of superintendent.  
Ibid.

places. And after the first election annually in the month of January, or as soon thereafter as may be, there shall be elected in the same manner to be trustees of said city hospital, two members of the board of aldermen and three members of the common council, to hold their offices for one year, and one citizen at large, to hold his office for three years, and until others are chosen respectively in their places. But each of said trustees shall at all times be subject to removal from office by the city council for cause. Whenever any vacancy shall occur in said board of trustees by death, resignation, or otherwise, such vacancy shall be reported by the said board to the city council, and they shall proceed to fill the same by the choice of another trustee, in the manner aforesaid, who shall hold his office for the residue of the term for which such member so deceased, resigned, or removed would have held the same. The said board of trustees, constituted as aforesaid after each annual election, shall choose a president and a secretary from their own number, and a majority shall constitute a quorum for business.

SECT. 2. The said board of trustees may appoint such consulting and visiting physicians and surgeons as they shall deem expedient; and they may also appoint such subordinate agents, assistants, and domestics as they may consider necessary. They shall prepare all needful rules and regulations for the government and management of said hospital, and submit the same to the city council for adoption, and with the approval of said city council, fix the compensation of the persons employed by them.

SECT. 3. The said board of trustees shall elect annually, in the month of February, and whenever a vacancy may occur, some suitable person as superintendent of the said hospital, who shall constantly reside at the institution. He shall be removable at their pleasure, and shall receive such compensation as the city council may from time to time determine.

SECT. 4. The superintendent, under the direction of the board of trustees, shall have the control of all departments of the hospital, of all subordinate officers, attendants, and

domestics, of the patients, and the charge of the grounds, Dec. 23, 1862. buildings, and appurtenances.

SECT. 5. The said trustees shall also have charge of any building which is or may be established within the city limits, by the city council, for the admission of patients having the small-pox, or any other infectious disease. And they shall make such rules and regulations for its management and government as they shall deem proper and necessary, subject, however, to the approval of the city council. And the said trustees shall carefully guard against the introduction of any cases of infectious disease into any other building under their charge than the one appropriated for the purpose by the city council.

Trustees to have charge of house for small-pox, &c.  
Ibid.

SECT. 6. The said board may make all necessary repairs and alterations in the several buildings under their charge, and improvements in the land and grounds connected with the institution; *provided*, the expense thereof shall not exceed the amount previously appropriated therefor by the city council. But they shall not make any change in the occupancy of said buildings without first obtaining the approval of the city council.

Trustees may make repairs, &c.  
Ibid.

SECT. 7. The city hospital is established for the reception of those only who require temporary relief during sickness. The trustees may, however, admit other persons to the institution, temporarily, when necessity requires; but such persons shall be removed to other appropriate public institutions, as soon as their condition will permit. They may, when compensation therefor is made, afford separate apartments and more accommodations than those which are customary when no compensation is made. Such extra compensation shall be credited to the appropriation for the hospital.

Hospital intended for temporary relief; may admit paying patients.  
Ibid.

SECT. 8. Annually, in the month of January, the said board shall submit to the city auditor an estimate, in detail, of the expenses of maintaining and conducting the hospital under their charge for the year next ensuing; and the said board shall expend no greater sum than shall be appropriated or authorized

Trustees to make estimate of expenses, &c. Shall not spend more than appropriation.  
Ibid.

Superintendent's report.  
Dec. 23, 1862.

by the city council. And the said estimate shall be accompanied by a report from the superintendent, upon such matters as they may direct, in reference to the general state of the institution, the number of its inmates, the number of admissions thereto, discharges therefrom, deaths and births therein during the year, and such other information pertaining to the said institution as they shall judge to be of public interest.

Gifts and bequests; how to be invested.  
June 24, 1863.

SECT. 9. All moneys which have been or shall hereafter be received, directly or indirectly by gift or bequest, for the benefit of the city hospital shall, unless conditions are connected with the gift or bequest inconsistent therewith, be received by the board of trustees of the said hospital, and be by them deposited in the city treasury; and city scrip shall be issued therefor, bearing interest at the rate of six per centum per annum, payable semi-annually, which said scrip shall be deposited with the auditor, who shall receive the interest as the same shall become due thereon, and add it to the moneys which shall have been appropriated for the use of the hospital. And all real estate and other property not converted into money by sale, and all evidences of title thereto, shall be received by the said board; and all such real estate and other property shall be leased, let, or otherwise improved, by the said board of trustees, and the rent and income thereof added in like manner to the moneys appropriated as aforesaid to the use of the hospital. All evidences of title thereto shall be deposited with the auditor.

Gifts, &c., to make permanent fund, except, &c.  
Ibid.

SECT. 10. All moneys, property, and estate given or bequeathed to the city, for the use of the hospital, unless the donors thereof shall have otherwise directed, shall constitute a permanent fund, the principal of which shall not be diminished, and the income of which shall be devoted to the uses of the hospital.

Duties of trustees in relation to property donated.  
Ibid.

SECT. 11. It shall be the duty of the board of trustees of the city hospital to exercise a careful supervision of all property, funds, and estate given or bequeathed for the use of the hospital, so as to prevent any loss or diminution of the value

thereof; and in the expenditure of the interest and income June 24, 1863. thereof they shall in all cases, in which conditions or directions have been attached to the gift or bequest, strictly observe and conform to such conditions or directions.

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### LUNATIC HOSPITAL.<sup>1</sup>

#### STATUTES.

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| <ol style="list-style-type: none"> <li>1. Authority to erect a hospital for the insane granted to Boston.</li> <li>2. City council to elect superintendent.</li> <li>3. City council may pass ordinances.</li> <li>4. Inspectors of prisons for Suffolk county to be inspectors of said hospital.</li> <li>5. Expense of the support of the insane, by whom paid.</li> <li>5. Insane to be transferred from houses of correction and industry and from hospital at Worcester, &amp;c.</li> <li>7. Certain insane, how committed. Appeal from police to superior court.</li> <li>8. Notice to be given to mayor of application for commitment.</li> </ol> | <ol style="list-style-type: none"> <li>9. Insane, how, and by whom discharged. Expense of support to be reimbursed, &amp;c.</li> <li>10. Repeal of part of sect. 5 of chap. 131, 1839.</li> <li>11. Amendment of Act of 1839, c. 131, § 3.</li> <li>12. Repeal of sect. 2, chap. 131, 1839.</li> <li>13. Concerning the admittance of insane not paupers.</li> <li>14. Same subject.</li> <li>15. Statement to be filed when application is made for commitment.</li> <li>16. Certificate of physicians to be filed when application is made.</li> <li>17. Removal of insane from state hospitals.</li> <li>18. Remedies for Boston, &amp;c., for support of persons so removed. Rates of pay.</li> <li>19. Boston lunatic hospital, proviso.</li> </ol> |
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<sup>1</sup> The Boston lunatic hospital is situated in South Boston near the house of correction. It was commenced in 1837, and completed in November, 1839, when the insane were first admitted. It was enlarged by the addition of two wings in 1846. It occupies, including the yards and garden, about four and one half acres of land, which is apart of the purchase of sixty-three acres, made by the city, of Samuel Brown, in 1821.

In 1839 certain powers were granted to the city of Boston relating to said hospital by the legislature, and at several times since other powers have been granted, which will be found in the text. Although the hospital was at first intended particularly for the benefit of the insane of Boston, for many years a large portion of its inmates were insane paupers discharged from the state hospital at Worcester at different times, for the purpose of relieving the state hospital of its crowded condition, or other state paupers committed by the courts in this city. After the establishment of the state hospitals at Taunton

## STATUTES.

Boston authorized to erect a hospital for the insane.  
1839, 131, § 1.

1. The city council of the city of Boston are hereby authorized to erect and maintain a hospital, for the reception of insane persons not furiously mad; and provision shall be made for the comfortable support of all persons confined therein.

Superintendent.  
Ibid. § 2.

2. The said city council shall appoint a superintendent, who shall be a physician, and constantly reside at said hospital.<sup>1</sup>

City council may pass ordinances, &c.  
Ibid. § 3.

3. The said council shall have power to pass such ordinances as they may deem expedient for conducting in a proper manner, the business of the institution, and for appointing such other officers as, in their opinion, may be necessary.

Inspectors of hospitals.  
Ibid. § 4.

4. The inspectors of prisons for the county of Suffolk shall be inspectors of said hospital, and shall perform the like duties in relation to it that they are now by law required to perform in relation to the prisons in said county.

Expense of support.  
Ibid. § 5.  
By whom paid.  
Ibid.

5. Such sum per week shall be allowed and paid, for the support of every such person confined as aforesaid, as the mayor and aldermen of the city of Boston shall direct; and if, in any case, there shall be no parent, kindred, master, guardian, town, or city obliged by law to maintain the person so confined, and if he have no means of supporting himself, the same sum shall be

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and Northampton, all the state paupers remaining in the hospital at Boston were removed to the several state hospitals, the last having been removed in September, 1858, since which time no pauper insane have been supported at South Boston at the expense of the state. The amounts received from the state were a source of income to the city, so much so that the expense of supporting the city insane was reduced to a very small sum. Since the removal of the state pauper inmates, insane persons have been admitted as boarders at prices according to the accommodations furnished.

The hospital is now under the management of the board of directors for public institutions, as provided for by the Act of 1857, c. 35, which see under title *Houses of Correction and Jails*, post. §§ 107-112 of Statutes; also see an ordinance of the city, following said act. The act and the ordinance placed all the charitable institutions of the city and the house of correction in Suffolk county under the care and management of a board to be called "The Board of Directors for Public Institutions."

<sup>1</sup> Sect. 2 was repealed by Act of 1851, c. 243. See § 11, *post*.

paid out of the treasury of the commonwealth, for his support, 1839, 131, § 5. as may be allowed for other lunatic or insane state paupers.<sup>1</sup>

6. All insane persons who are now confined in the house of correction or the house of industry in said city, or may hereafter be subject to confinement therein, and all lunatics, idiots, and other patients, who shall be removed from the state lunatic hospital at Worcester to the city of Boston, by the trustees thereof, by virtue of the fourteenth and fifteenth sections of the forty-eighth chapter of the Revised Statutes, shall be hereafter confined in the said Boston lunatic hospital.<sup>2</sup>

Inmates of houses of correction and industry and of the hospital at Worcester to be transferred, &c.  
Ibid., § 6.

7. The Act of 1840, chapter seventy-nine, provided that whenever it shall be made to appear, on application in writing to the police court of the city of Boston, that any person is insane not being furiously mad, and is either chargeable or likely to become chargeable to the city or the state, or being furiously mad, has his legal settlement in, and is chargeable to, said city, the said police court are hereby authorized to order the confinement of such person in the said Boston lunatic hospital, saving to the person complained against the same right to appeal from such order to the municipal court<sup>3</sup> of the city of Boston, as is now allowed from other judgments of said police court by law. And upon his appeal, the question of his sanity shall,

Certain insane; how committed.  
1840, 79, § 1.

Appeal from police to superior court.  
Ibid.

<sup>1</sup> So much of sect. 5 as related to the commitment and discharge of the insane by the municipal court was repealed, and the power transferred to the police court, by Act of 1840, c. 79. See §§ 7-10, *post*.

<sup>2</sup> Sects. 14 and 15 of c. 48 of the Revised Statutes were re-enacted in the Gen. Stats. c. 73, §§ 27, 29. They provided for the removal of some of the insane from the state hospitals to houses of correction and jails, when the state hospitals were too full, and those that were sent to Suffolk county were to be confined in the Boston lunatic hospital by special act, as will be seen by §§ 6 and 9 in the text. The Act of 1862, c. 223, has made many alterations in the Gen. Stats. c. 73, relating to the hospitals and the insane, and it may be doubtful if there is by the present law any authority to remove any of the insane from either of the state hospitals to the Boston lunatic hospital as formerly. Sect. 17, in the text, provides for removals from the state hospitals to different places, but does not provide for future confinement in any institution.

The Act of 1839, c. 131, in § 7, which provided for the discharge and support of the insane in the hospital, is omitted, as similar provisions are made in Act of 1840, c. 79, § 3. See § 9, *post*.

<sup>3</sup> Now the superior court for the transaction of criminal business.

1840, 79, § 1.

upon his request therefor, be tried by a jury in said court. If on such appeal it shall be made to appear that such person is insane as aforesaid, and is or is likely to be chargeable as aforesaid, the said municipal court<sup>1</sup> shall affirm the judgment of the said police court, with additional costs, and issue a warrant for his commitment according to law; otherwise such person shall be discharged.

Notice to be  
given to  
mayor, &c.  
Ibid. § 2.  
See §§ 15, 16.

8. Any person who shall apply for the commitment of any lunatic, under the provisions of the preceding section, shall first give notice in writing to the mayor of the city of Boston, of his intention to make such application, and satisfactory evidence that such notice has been given shall be produced to the said police court at the time of making such application. And the said police court may order any further notice of such application to be given to the person complained of, or to any other person or persons in his behalf, as they shall deem to be necessary or reasonable.

Insane, how  
and by whom  
discharged.  
1860, 70, § 3.

9. Any person committed to said hospital by either of the courts as aforesaid, and any person who may be confined in said hospital, upon his removal from the state lunatic hospital, as provided in the sixth section<sup>2</sup> of the act to which this is in addition, may at any time be discharged therefrom by the mayor and aldermen<sup>3</sup> of the said city of Boston whenever the cause of confinement shall have ceased to exist, or when in the opinion of the said mayor and aldermen such discharge would be for the benefit of the person so confined, or when in their opinion such person would be comfortably supported by any parent, kindred, friends, master, or guardian, or by any town or city in which such person may have a legal settlement. And said mayor and aldermen, whenever in their opinion such lunatic or insane person can in such manner be more comfortably provided for, and the safety of the public will not be endangered thereby, may provide for his custody and support in other places than

<sup>1</sup> Now the superior court for the transaction of criminal business.

<sup>2</sup> That is § 6 in the text.

<sup>3</sup> The powers enumerated in § 9 are now vested in the board of directors for public institutions. See note, p. 330, *ante*.

in said hospital, the said lunatic or insane person still continu- 1840, 79, § 3.  
 ing subject to the order and direction of the said mayor and  
 aldermen; or, said mayor and aldermen may deliver him to the  
 custody and care of any city or town in which he may have a  
 legal settlement. The expense of so providing for such lunatic  
 or insane person shall be reimbursed in the same manner and  
 recovered by the same remedies as are provided in the sixteenth  
 section of the forty-eighth chapter of the Revised Statutes; <sup>Expense of support to be reimbursed. Ibid.</sup> <sup>1</sup>  
*provided*, that in no case shall the sum charged for such provis-  
 ion exceed two dollars and fifty cents per week.

10. So much of the one hundred and thirty-first chapter of  
 the Statutes of the year one thousand eight hundred and thirty-  
 nine, as relates to the commitment of persons to the said Boston  
 lunatic hospital, by the judge of the municipal court of the city  
 of Boston, and to their discharge therefrom by him, is hereby  
 repealed; but all orders of the said judge relating thereto, and  
 rendered prior to the time this act shall take effect, shall remain  
 in full force. <sup>Repeal of part of Act of 1839, 131, § 5. See p. 331, ante. 1840, 79, § 4.</sup> <sup>2</sup>

11. By an act passed May 23, 1851, the third section of  
 the one hundred and thirty-first chapter of the Acts of the year  
 one thousand eight hundred and thirty-nine, <sup>Amendment of Act of 1839, 131, § 3. 1851, 243, § 1.</sup> <sup>3</sup> being an act en-  
 titled "An act to establish the Boston lunatic hospital," is so  
 amended that the city council of the city of Boston shall have  
 power to pass such ordinances as they may deem expedient for  
 conducting in a proper manner the business of that institution,  
 and for appointing such officers as in their opinion may be  
 necessary.

12. The second section of the said chapter is hereby re-  
 pealed. <sup>Repeal. Ibid. § 2. See p. 337.</sup>

13. By an act passed May 30, 1857, the city of Boston,  
 by and through the agency of the board of visitors <sup>Admittance of insane not paupers.</sup> <sup>4</sup> of the

<sup>1</sup> Sect. 16 of the Revised Statutes, referred to in § 9 in the text, was re-  
 enacted in Gen. Stats. c. 73, § 28, but the last was repealed by Act of 1862,  
 c. 223, § 18. How far § 19 in the text, p. 336, may qualify this repeal so far  
 as it relates to Boston — *quære*.

<sup>2</sup> The above act passed March 23, 1840.

<sup>3</sup> See the act referred to, p. 330, §§ 1-6.

<sup>4</sup> Now through the agency of the board of directors for public insti-

1857, 281, § 1. Boston lunatic hospital, or by and through any other agency which shall be established therefor by the city council of the city of Boston, may admit into said hospital, as patients, insane persons who are not paupers, upon such terms and conditions and for such compensation as may from time to time be fixed by said city council, or by the authority thereof.

Admittance of  
insane not  
paupers.  
1857, 302, § 1.

14. By another act, passed May 30, 1857, the municipal<sup>1</sup> court of the city of Boston, and all other courts and magistrates having authority to commit insane persons to the state lunatic hospital, may commit all insane persons found in the city of Boston, whether they are furiously mad or otherwise, who have their legal settlement in the city of Boston or in any other city or town within this commonwealth, to the Boston lunatic hospital, in all cases in which said courts and magistrates are authorized by law to commit such persons to the state lunatic hospital.

Statement to  
be filed.  
1862, 223, § 5.  
See § 8, *ante*.

15. Upon every application for the commitment or admission of an insane person to any hospital or asylum for the insane, there shall be filed with the application, or within ten days after the commitment or admission, a statement in respect to such person, showing as nearly as can be ascertained his age, birth-place, civil condition, and occupation; the supposed cause and the duration and character of his disease, whether mild, violent, dangerous, homicidal, suicidal, paralytic, or epileptic; the previous or present existence of insanity in the person or his family; his habits in regard to temperance; whether he has been in any lunatic hospital, and if so what one, when, and how long; and, if the patient is a woman, whether she has borne children, and, if so, what time has elapsed since the birth of the youngest; the name and address of some one or more of his nearest relatives or friends, together with any facts showing whether he has or has not a settlement, and if he has a settlement, in what place; and if the applicant is unable to state any of the above particulars, he shall state his inability to do so. The statement or a copy thereof shall be transmitted to the superintendent of the

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tutions. See note, p. 330, *ante*, and *Houses of Correction and Jails*, post. §§ 107-112 of Statutes.

<sup>1</sup> Now the superior court for the transaction of criminal business.

hospital or asylum, to be filed with the order of commitment, 1862, 223, § 5. or the application for admission.

16. Upon every application for the admission of an insane person to the several state lunatic hospitals, or to any asylum or private house for the reception of the insane, the applicant shall file with his application a certificate, signed by two respectable physicians, one of whom, when practicable, shall be the family physician of the patient, certifying after due inquiry and personal examination of the patient by them, within one week prior to the date of the certificate, to the insanity of the person in whose behalf admission is sought, and that such person is a fit subject for remedial treatment at such hospital, asylum, or private house.

Certificate of physicians to be filed.  
Ibid. § 8.  
See § 8, ante.

17. If at any time all the state lunatic hospitals shall be so full that the inmates cannot all be suitably accommodated therein, and in the opinion of the trustees of either hospital it is proper that some should be removed, the trustees may remove to their respective homes, or to the places of their legal settlement, or of their residence, so many as may be necessary to afford suitable accommodation for the remainder; but only such patients shall be selected for removal as, in the opinion of the trustees and superintendent, are not susceptible of improvement and can be suitably managed at their homes or in the places to which they may be sent.<sup>1</sup>

Removal of insane from state hospitals.  
Ibid. § 13.

18. The city of Boston, town of Nantucket, or any county, may recover expenses incurred for the support of lunatics removed under the preceding section, of the lunatic or any kindred obligated by law to maintain him, and shall have like rights and remedies to recover the full amount of such expenses against the place of his settlement as towns have against each other to recover the expenses of supporting paupers. If the lunatic has no settlement in this state, and such expenses are not paid by himself or his kindred, said city, town, or county shall be indemnified by the commonwealth; *provided*, that the sum to be paid by the commonwealth shall in no case exceed two dollars and fifty cents per week for a term less than thirteen weeks;

Remedies for Boston, Nantucket, and any county for support of persons so removed.  
Rates of pay.  
G. S. 73, § 28.

<sup>1</sup> See note, p. 331, *ante*.

G. S. 73, § 28. two dollars and twenty-five cents per week for any term exceeding thirteen weeks and less than twenty-six weeks; two dollars per week for any term exceeding twenty-six weeks and less than one year; nor be more than at the rate of one hundred dollars per year for any term of one year and upwards; nor more in any case than the amount actually paid out and expended for the support of such state lunatic pauper.<sup>1</sup>

Boston lunatic hospital, proviso.  
G. S. 74, § 12.  
1839, 131.  
1840, 79.  
1851, 243.  
1857, 281, 302.

19. Nothing contained in chapters seventy-three or seventy-four of the General Statutes shall repeal any provisions of law specially relating to the Boston lunatic hospital, or the confinement, care, and support of insane persons therein.<sup>2</sup>

## HOUSES OF CORRECTION AND JAILS.

### STATUTES.

1. Transfer of county property from Chelsea to Boston.
2. Towns, &c., not to erect almshouses, &c., in other places, except, &c.
3. Counties to provide public buildings, &c.

### JAILS.

4. County jails, for what purposes to be used.
5. Sheriff may remove prisoners.
6. May furnish employment to prisoners.
7. To be reimbursed for damages for escape by reason of insufficiency of jails.

8. Jailers to return list of prisoners to court. Penalty for neglect.

### HOUSES OF CORRECTION.

9. Houses of correction, how provided, &c.
10. To have enclosed yards. Jail may be used as house of correction.
11. Removal of convicts from one house to another.
12. Commissioners to assent, &c.
13. Sentence and classification.
14. Provisions for reading to be made.
15. Overseers of houses of correction, how appointed.
16. Compensation of overseers.

<sup>1</sup> See note, p. 331, *ante*.

<sup>2</sup> An ordinance relating to the Boston lunatic hospital, passed October 3, 1842, and ordinances in addition thereto, passed March 13, 1845, June 4, 1846, and July 7, 1853, were repealed by the ordinance concerning the public institutions passed August 25, 1857, and amended December 16, 1859.

For laws relating to the insane sent to the state lunatic hospitals, see Gen. Stats. c. 73, and Act of 1862, c. 223; also *Paupers*, post.

17. Directors to furnish materials, &c., for work; rules and regulations, &c.
  18. Overseers of houses of correction, &c.; their powers and duties.
  19. May make contracts for work to be done in the house.
  20. May make contracts for letting the convicts out for hire.
  21. Convicts may be employed on public lands and buildings belonging to the county.
  22. Females, how sentenced.
  23. Sentence of female convicts with infants.
  24. Pregnant females may be transferred to workhouse, &c. Cost of their support.
  25. Female convicts may have custody of their children under the age of eighteen months.
  26. How such child may be removed.
  27. Rogues, vagabonds, &c.
  28. They may be punished by fine, and sentenced conditionally, &c.
  29. Master of house of industry, &c., to receive convicts.
  30. Prisoners reformed may be discharged, &c.
  31. Conviction of offenders after discharge on former conviction.
  32. Night-walking, third conviction.
  33. Night-walkers, &c., committed for third offence may be bound out, &c.
- PROVISIONS RESPECTING JAILS, HOUSES OF CORRECTION, PRISONERS, ETC.
34. Sheriff to have custody of jail, prisoners, &c. Master of house of correction in Suffolk.
  35. Jailer, how removed, except in Suffolk.
  36. Sheriff to deliver prisoners to successor.
  37. Upon death of sheriff, jailer to continue in office, until, &c.
  38. Compensation of sheriff for care of prisoners. Not to receive rent for use of county dwellings.
  39. Salaries of officers, assistants, &c.
  40. If inadequate, superior court to determine.
  41. Jailer's fees.
  42. Sheriff who acts as jailer, &c., may receive additional compensation.
  43. Jailer, &c., to keep calendar of prisoners. Penalty.
  44. Record of conduct to be kept and term of imprisonment reduced in certain cases.
  45. Wardens, masters, &c., to keep account of money, &c.
  46. Warrants, &c., to be filed, &c.
  47. Prisons, &c., to be whitewashed, kept clean, &c.
  48. Cleanliness of prisoners, their food, &c.
  49. Classification and separation of prisoners.
  50. Execution of sentence to solitary imprisonment.
  51. Prisoners to be kept to hard labor, but not in engraving or printing. Log and chain may be used.
  52. Punishment for refusing to work, &c. Not to be in solitary more than three days, &c.
  53. Punishment for prisoners escaping, &c.
  54. Punishment of refractory prisoners.
  55. Punishment of poor debtors, &c., who commit depredations.
  56. Sheriff's and keeper's authority not affected.
  57. Moral and religious instruction to prisoners, &c.
  58. Instruction in reading and writing.
  59. Burial of deceased prisoners.
  60. Spirits and strong drink prohibited, unless, &c.
  61. Penalty for furnishing, or attempting to furnish, spirits, &c., to prisoners.
  62. Penalty for neglect of duty by sheriff, jailer, &c.

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| 63. Officers using intoxicating liquors to be removed.<br>64. Removal of prisoners in case of pestilence.<br>65. Removal in case of danger from fire. | 87. Provisions of sects. 89, 90 apply to sects. 85, 86.<br>88. Sheriffs, &c., to make returns. Abstract.<br>89. Penalties for neglect.<br>90. Prosecution of delinquents. |
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## EXPENSE OF SUPPORTING PRISONERS.

66. Commissioners to procure supplies, &c.  
 67. Expense of supporting convicts in jail, &c., how paid.  
 68. Advancement of money for tools, materials, &c.  
 69. Master, &c., to keep account of earnings, &c.  
 70. Master to supply fuel, &c. Allowance therefor.  
 71. Masters to obey orders for furnishing specific rations. Penalty.  
 72. Compensation of master of house of correction in Suffolk.  
 73. Overseers, &c., to audit accounts for support of convicts, &c.  
 74, 75. Support of poor convicts, how recovered of kindred, town, &c.  
 76. Notice to town liable for.  
 77. Jailers, &c., to keep a prison book. Penalty for neglect.

## INSPECTORS OF PRISONS.

78. Inspectors of prisons, &c.  
 79. Keepers, &c., to make stated returns.  
 80. Inspectors, powers and duties of.  
 81. Inspectors in Suffolk.  
 82. Inspectors to have access to books, accounts, prisoners, &c.  
 83. Inspectors to notify district attorney of violations of law.

## RETURNS.

84. Inspectors to make annual returns to governor.  
 85. Blank forms of returns to be furnished by secretary.  
 86. County commissioners shall make returns to sheriff.

## COMMITMENTS AND DISCHARGES.

- 91, 92. Courts may sentence to jail or house of correction.  
 93, 94. Conditional sentences.  
 95. Court may impose fine or imprisonment, except, &c.  
 96. Magistrate to certify if convict is unable to pay fine, &c.  
 97. Poor convicts, how discharged after three months.  
 98. Poor convicts, how discharged after thirty days.  
 99. Poor convicts, discharged at any time in Suffolk, &c.  
 100. Persons under guardianship, how discharged.  
 101. Fine and cost may be recovered of guardian.  
 102. Fees of justices for discharge.  
 103. Discharged convict paupers to be removed to almshouses in certain cases.  
 104. Convicts too sick to be removed, how to be provided for.

## LUNATICS IN PRISON.

105. Insane persons in prison, how removed to hospital.  
 106. If sane before term expires, to be returned.

## BOARD OF DIRECTORS FOR PUBLIC INSTITUTIONS.

107. Directors for the public institutions to be chosen; their powers and duties.  
 108. May discharge the insane.  
 109. City council may pass ordinances.  
 110. City council to elect directors; term of office.  
 111. Act to be accepted.  
 112. Repeal of other acts.

113. Directors may remove persons from one institution to another.

ORDINANCE.

1. Election of directors for the public institutions; term of office; removal, &c.
2. Organization of board; clerk appointed; quorum.
3. Powers and duties of directors.
4. Board may make rules, &c., for government, &c.; fix compensation of officers. Rules,

&c., to be approved by city council.

5. Shall elect superintendent of lunatic hospital. His compensation and duties.
6. May make repairs, &c.; expense limited.
7. Supplies for institutions, how procured. No director to have any interest in contracts.
8. Directors to make quarterly and annual reports.
9. Repeal of former ordinances.

STATUTES.<sup>1</sup>

1. By a special act of the legislature, passed June 23, 1831, it was provided that the town of Chelsea should release to the city of Boston all title and interest in all the real and personal estate deemed and taken to belong to the county of Suffolk; and the exclusive jurisdiction of the court houses, jails, houses of correction, and all other lands and buildings deemed county property, and that the rights thus acquired should forever remain vested in the city of Boston.<sup>2</sup> The rights so acquired were confirmed by the Revised Statutes and again by the General Statutes. By the above acts, and others, it was provided that the towns of Chelsea, North Chelsea, and Winthrop should not be assessed or taxed for county purposes. It was further provided that in the county of Suffolk the court houses, jails, houses of correction, fire-proof offices, and all other county buildings shall

Transfer of county property from Chelsea to Boston.  
1831, 65, §§ 1, 2.  
See pp. 109, 110, *ante*.  
G. S. 17, § 3.  
See § 9.

R. S. 14, § 7.  
G. S. 17, § 3.

R. S. 14, § 10.  
G. S. 17, §§ 6, 33, 35.

<sup>1</sup> Under this title are included nearly all the general laws relating to houses of correction and jails in the several counties. Most of them are applicable to Suffolk, though modified to some extent by many special enactments regulating the management of the public institutions in Suffolk, and the execution of the laws by other boards different from those in the other counties. The house of correction, house of industry, house of reformation, and lunatic hospital are placed under the management of a board of directors, by a special law passed March 28, 1857. See *post*. pp. 367-369, §§ 107-112.

<sup>2</sup> It was provided in § 2 of the Act of 1831, that the connection existing between the city of Boston and the town of Chelsea should continue, as an equivalent for said release, twenty years, and afterwards, until it should be altered by the legislature, unless Chelsea should, in the mean time, apply to the legislature and be set off to another county. See *ante*, pp. 109, 110.

G. S. 17, § 6. be provided by the aldermen of the city of Boston, at the expense of the city.<sup>1</sup>

Towns, &c.,  
not to erect  
almshouses,  
&c., in other  
place, &c.  
G. S. 22, § 2.  
Counties to  
provide public  
buildings, &c.,  
except, &c.  
G. S. 17, § 5.

2. No city or town shall erect or maintain an almshouse or house of correction within the limits of any other place, without the consent of such other place.

3. Each county, except Suffolk, shall provide suitable court houses, jails, houses of correction, fire-proof offices, and other necessary public buildings for the use of the county; except that the county of Dukes County need not provide a house of correction.

#### JAILS.

County jails,  
for what  
purposes to  
be used.  
G. S. 178, § 1.

4. The jails in the several counties shall be used, —  
*First.* For the detention of persons charged with offences and committed for trial :

*Second.* For the detention of persons committed to secure their attendance as witnesses on the trial of criminal causes :

*Third.* For the confinement of persons committed pursuant to a sentence upon conviction for an offence, and of all other persons committed for any cause authorized by law.

Gen. Stats. 144,  
§ 61 refers to  
persons accused  
or convicted  
under the fugi-  
tive slave law.

The provisions of this section shall extend to persons detained or committed by authority of the courts of the United States, as well as the courts and magistrates of this state, except as is provided in section sixty-one of chapter one hundred and forty-four of the General Statutes.

Sheriff may  
remove  
prisoners.  
Ibid. § 2.

5. If there are several jails in a county, the sheriff may cause the prisoners to be confined in either, and may at his discretion remove them from one jail to another for their health or safe-keeping, or for their more convenient appearance at court.

Sheriff may  
furnish  
employment  
to prisoners.  
Ibid. § 3.  
See § 21.

6. The sheriff may furnish to the prisoners employment of such nature and in such places as he deems best, and consistent with their safe-keeping; but this section shall not be construed to

<sup>1</sup> The aldermen of the city of Boston have the power and perform the duties (with some exceptions) of county commissioners within the city. Gen. Stats. 17, § 33. By a special Act passed May 20, 1852, c. 266, § 4, it was provided in what manner the aldermen should build, alter, or repair the county buildings, &c. See *Public Buildings*, post.

require the performance of any labor by persons confined in jail. G. S. 178, § 5.  
See § 21.

7. In case of the escape of a prisoner by reason of insufficiency of the jail, whereby the sheriff is made liable to any party at whose suit the prisoner was committed, or to whose use any forfeiture was adjudged against him, the county shall reimburse all sums of money recovered by such party of the sheriff on account of the escape. To be reimbursed for damages for escape, &c.  
Ibid. § 4.

8. At the opening of each term of the superior court at which criminal business may be transacted, the jailers of the county shall return to the court a list of all prisoners in their custody, specifying the causes for which and the persons by whom they were committed, and produce and exhibit therewith, for the inspection of the court, their calendars of prisoners, and return a like list of the persons committed during the session of the court, in order that the court may take cognizance and make deliverance according to law of the prisoners committed for crimes within its jurisdiction. Jailers who neglect to make such returns, or to exhibit their calendars, shall be fined in the discretion of the court. Jailers to return list of prisoners, &c., to court.  
Penalty for neglect.  
Ibid. § 5.  
Act of Amend. § 19.

HOUSES OF CORRECTION.

9. There shall be provided by the county commissioners in each county except the county of Dukes County, and in Suffolk by the aldermen of the city of Boston, at the charge of said counties and city respectively, a fit and convenient house or houses of correction, suitably and efficiently ventilated, with convenient yards, workshops, and other suitable accommodations, adjoining or appurtenant thereto, for the safe-keeping, correcting, governing, and employing of offenders legally committed thereto by authority of the courts and magistrates of this state or of the United States, except as provided in section sixty-one of chapter one hundred and forty-four of the General Statutes. Houses of correction, how provided, &c.  
G. S. 178, § 6.  
See § 1.  
Gen. Stat. 144, § 6, refer to persons accused or convicted under the fugitive slave law.

10. The yards shall be of sufficient extent for the convenient employment of the persons confined therein, and enclosed by fences of sufficient height and strength to prevent escapes, and Houses of correction to have enclosed yards.  
Jail may be

used as  
house of cor-  
rection.  
G. S. 178, § 7.

also to prevent all persons without from access to or communication with any persons confined therein. When such house of correction is not provided, the jail or a part thereof may be used for that purpose; but when so used it shall be provided with a sufficient yard, so enclosed.

Removal of  
convicts from  
one house to  
another.  
1860, 164, § 1.  
See § 13.

11. In counties where there are two or more houses of correction, and the sentence of prisoners is to either of them, the sheriff, with the concurrence of the county commissioners of such county, may remove any convict, in any one of said houses, to any other within the county, whenever in the judgment of said sheriff and county commissioners, the health, reformation, safe-keeping, or more profitable employment of any such convict would be promoted by such removal.<sup>1</sup>

When removed  
commissioners  
to assent, &c.  
1860, 164, § 2.

12. Whenever any convict is removed as aforesaid, the county commissioners, or a majority of them, shall certify their assent to such removal upon the original mittimus, or copy of the same, left with the keeper on the commitment of such prisoner; and such original mittimus or copy shall be transmitted to, and left with, the keeper of the house of correction to which such prisoner is removed, with a return by the sheriff of his doings thereon, and of the expenses incurred thereby; which expenses shall be paid by the county.

Sentence and  
classification.  
1862, 127, § 1.  
See § 11, and  
note.

13. If there are several houses of correction in a county, the sentence of prisoners shall be to either house of correction therein, and the sheriff may classify the convicts and place them in either house; such classification being subject to the revision of the county commissioners, at their next subsequent meeting.

Provisions for  
reading to be  
made.  
1862, 127, § 2.  
See §§ 57, 58.

14. In the assignment of cells to prisoners in any house of correction, due regard shall be had to the accommodation of those who are able and desirous to read; and from the first day of October to the first day of April, annually, such provision of light shall be made for all such prisoners confined to labor

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<sup>1</sup> A reasonable construction to be put on the Acts of 1860, c. 164, and of 1862, c. 127, § 1, being §§ 11 and 13 in the text, would seem to be that the Act of 1860 only provided for removals in individual cases, whereas the Act of 1862 provided for a general classification and removal from one prison to another. The Act of 1862 repealed § 8 of chap. 178 of General Statutes.

during the day, as shall enable them to read for at least one hour each evening. 1862, 127, § 2.

15. The commissioners in the several counties, except Suffolk, shall annually, on the first Wednesday of January, appoint to each house of correction two or three suitable persons of the county, other than the sheriff or commissioners, to be overseers thereof, and may remove any overseer and fill vacancies. Houses of correction, overseers of, how appointed. G. S. 178, § 9.

16. Each overseer shall receive from the county such annual compensation for his services and travel, not exceeding one hundred dollars, as the commissioners determine, and the directors for public institutions in the city of Boston shall receive such compensation as the city council allows. Compensation of overseers. Ibid. § 10.

17. The commissioners in the several counties, except Suffolk, and the board of directors for public institutions in Boston, shall cause to be provided, at the expense of said counties and city respectively, suitable materials and implements sufficient to keep at work all the persons committed to the house of correction, and may from time to time establish needful rules for employing, reforming, governing, and punishing the persons so committed, for procuring and preserving such materials and implements, and for keeping and settling all accounts of the cost and expenses of procuring the same, and of all labor performed by each of the persons so committed. Materials, &c., for work in; rules and regulations in, &c. Ibid. § 11.

18. In the county of Suffolk the board of directors for public institutions, and in other counties the overseers, shall see that the rules established for the management of the house of correction and the government of the persons confined therein are strictly observed, examine all accounts of the master relating to the earnings of the prisoners and all expenses of the institution, and keep a fairly written register of their official proceedings. Board of directors and overseers, general powers and duties. Ibid. § 12.

19. They may make contracts for work to be done in the house, with any person disposed to supply materials to be there wrought, and in such case may stipulate that the contractor shall furnish some person, to be approved by them, to oversee the labor of the convicts and instruct them in business or trades, conforming to all rules of the prison, and not interfering with the discipline thereof. May make contracts for work to be done in house, &c. Ibid. § 13.

May let convicts  
out to hire, &c.  
G. S. 178, § 14.

20. They may make contracts for letting out to hire during the daytime any of the persons there confined, to employers who live so near to the house of correction that the directors or overseers or the master of the house can have the general inspection of the conduct of the persons so let out, and of the treatment they receive.

Convicts may  
be employed on  
public lands,  
&c.  
Ibid. § 15.  
1863, 99.

21. The commissioners, or directors, may, with the assent of the master or keeper of any house of correction or jail, employ any of the prisoners to labor upon the public lands and buildings belonging to the county.

Females, how  
sentenced.  
G. S. 174, § 14.  
12 Cush. 237.

22. When sentence of confinement at hard labor for any term of time is awarded against a female convict of whatever age, the court shall order such sentence to be executed either in the house of correction or jail, and not in the state prison.

Females with  
infants, &c.  
G. S. 174, § 12.  
See § 6.

23. When a female with a nursing infant is convicted of an offence punishable by imprisonment in the house of correction, the court or justice before whom the conviction takes place may sentence her to some workhouse or house of industry in the county; and for her support and custody there shall be paid from the county treasury two dollars a week to the town in which the sentence is executed.

Pregnant  
females may be  
transferred to  
workhouse, &c.  
Cost of their  
support.  
G. S. 178, § 16.

24. When it appears to the physician of a house of correction that a female convict is in a state of pregnancy, any judge of the superior court, or any police court, may, upon application of the master or keeper of the house, or of the convict, revise her sentence so far as to order her to be transferred to any workhouse or house of industry in the same county for such term as is expedient, not exceeding the remainder of her sentence; and may at any time before the expiration of her sentence cause her to be again restored to the house of correction. For the support and custody of each female so transferred, two dollars a week shall be paid by the county to the city or town to which she is transferred.

Female con-  
victs may have  
custody of  
their children  
under a certain  
age.

25. When the mother of a child under the age of eighteen months is imprisoned in a house of correction, jail, workhouse, or other place of confinement, and is capable and desirous of taking care of said child, the keeper shall, upon the order of the

court or magistrate committing her, or of any overseer of the poor, receive the child and place it under the care and custody of its mother. G. S. 178, § 29.

26. When the overseers, inspectors, or other like officers of such institution are satisfied that the health and comfort of such child call for its removal, or that for any cause it is expedient that it should be removed, they shall give notice to the father or other relatives thereof; and if neither can be found to receive it, to the overseers of the poor of the city or town in which it has a legal settlement, who shall receive it; or if it has no settlement in this state, it shall be sent to one of the state almshouses, as is provided in the case of alien paupers. How such children may be removed, &c. Ibid. § 30.

27. Rogues and vagabonds, idle and dissolute persons who go about begging, persons who use any juggling or unlawful games or plays, common pipers and fiddlers, stubborn children, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, and lascivious persons in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, misspend what they earn, and do not provide for themselves or for the support of their families, and all other idle and disorderly persons, including therein those persons who neglect all lawful business and habitually misspend their time by frequenting houses of ill-fame, gaming-houses, or tippling-shops, may, upon conviction, be committed, for a term not exceeding six months, to the house of correction, or to the house of industry or workhouse within the city or town where the conviction is had, or to the workhouse, if any there is, in the city or town in which the offender has a legal settlement, if such town is within the county. Rogues, vagabonds, &c. G. S. 165, § 28. 8 Met. 513. 5 Gray, 85. See §§ 30, 31, 74.

28. When a person is convicted, by a justice of the peace or police court, of any offence mentioned in the preceding section, he may, instead of the punishment therein mentioned, be punished by fine not exceeding twenty dollars, either with or without a condition that if the same with the costs of prosecution is not paid within a time specified, he shall be committed to the house of correction, house of industry, or workhouse, as is provided in the preceding section; which conditional sentence They may be punished by fine, and sentenced conditionally. G. S. 165, § 29. 8 Met. 513.

G. S. 165, § 29. shall be carried into execution according to the provisions of  
See p. 365, § 94. section seven of chapter one hundred and seventy-four of the  
General Statutes.

Master of  
house of indus-  
try, &c., to  
receive and set  
to work persons  
committed, &c.  
Ibid. § 30.

29. The master, keeper, director, or overseer, of a house of industry or workhouse to which any person is committed under the two preceding sections, shall receive all persons so committed, set them to work if they are able, and employ and govern them in the manner required by law, and prescribed by the rules and orders established for that purpose; and the city or town in which such house is situated may recover the balance of the expense of the support of any such person over and above the amount of his labor, from the party thus sentenced, or from any kindred, town, or city, liable by law for his support, if he is a pauper, in like manner as if he had been committed to the house of correction for the same offence.

Certain prison-  
ers supposed to  
be reformed  
may be dis-  
charged, &c.  
G. S. 178, § 17.  
1862, 189.  
See § 31.

30. When it appears to the overseers or directors of a house of correction, house of industry, or workhouse, that a person there confined on conviction before a justice of the peace or before any police court, of either of the offences mentioned in section twenty-seven, has reformed, and is willing and desirous to return to an orderly course of life, they may, by a written order, discharge him from confinement. Any person committed by the superior court, or any police court, for either of said offences, may be discharged by such courts respectively upon the recommendation of the overseers or directors.<sup>1</sup>

Conviction of  
certain offend-  
ers after dis-  
charge on for-  
mer conviction.  
G. S. 165, § 34.

31. If a person discharged under the provisions of the preceding section is afterwards convicted of any offence mentioned in section twenty-seven, committed after the former conviction, either in the same or a different county, he may be sentenced by the magistrate or court before whom the second conviction is had, to hard labor in the house of correction, house of industry, or workhouse, for a term not exceeding one year.

<sup>1</sup> The Gen. Stats. c. 178, § 17, is amended by the Act of 1862, c. 189, by authorizing overseers and directors to discharge convicts sent from police courts, instead of recommending them to the courts for a discharge, making the rule the same as it was before, relating to convicts sent by justices of the peace. But convicts sent by the superior courts can only be discharged by said courts on recommendation of the overseers, &c., as before.

32. When a person is convicted as a common night-walker, and it is alleged in the complaint and proved at the trial, that the defendant has been previously twice convicted of the same offence, such person may be sentenced to the house of correction, house of industry, or workhouse, if any such is established in the town or city, for a term not exceeding five years.

Night-walking,  
third conviction.  
G. S. 165, § 35.

33. The overseers or directors of any house of correction, workhouse, or house of industry, may, after six months from the time of sentence, discharge any person committed thereto under the preceding section, upon being satisfied that the convict has reformed; or may bind out such person for any term during the period of the sentence, as an apprentice or servant to any inhabitant of this state; and said overseers and directors, and the master, mistress, apprentice, and servant, shall respectively have all the rights and privileges, and be subject to all the duties set forth in chapter one hundred and eleven of the General Statutes, in the same manner as if such binding were made by the overseers of the poor; and the relations between the parties shall not be affected by the age of the party bound. If the master or mistress is discharged from the contract of service or apprenticeship as provided in said chapter, the person bound shall be returned to the place of confinement, and serve out the original sentence, if any portion thereof is unexpired; but the overseers or directors shall not be liable to the costs of the process provided in said chapter.

Night-walkers,  
&c., committed  
for third  
offence may be  
bound out or  
discharged in  
certain cases.  
G. S. 178, § 18.  
See § 32.

G. S. 111 relates  
to masters, ap-  
prentices, and  
servants.  
See post.  
*Paupers*,  
§§ 65-88.

PROVISIONS RESPECTING JAILS, HOUSES OF CORRECTION,  
PRISONERS, ETC.

34. The sheriff shall have the custody, rule, and charge of the jails, and except in the county of Suffolk,<sup>1</sup> the houses of correction in his county, and of all prisoners therein, and shall keep the same by himself, or by his deputy, as jailer, master, or keeper, for whom he shall be responsible. The jailer, master, or keeper shall appoint all subordinate assistants, employees, and officers, for whom he shall be responsible. In the county of

Sheriff to have  
custody of jail,  
prisoners, &c.  
Master of house  
of correction in  
Suffolk.  
G. S. 178, § 19.

<sup>1</sup> In Suffolk the house of correction is under the care of the board of directors for public institutions. See *post.* pp. 367-369, §§ 107-112.

G. S. 178, § 19. Suffolk the city council of Boston shall appoint a suitable person to be master of the house of correction, to hold his office during their pleasure.

Master, how removed.  
Ibid. § 20.

35. Any master, keeper, or jailer, except in the county of Suffolk, may be removed by the superior court for neglect of duty, or wasteful or extravagant use of supplies, upon complaint of the county commissioners, setting out the facts, and after notice to the sheriff and the person complained of, and a hearing thereon.

Sheriff to deliver prisoners to successor.  
Ibid. § 27.

36. Every sheriff, upon the expiration of his commission, or his resignation or removal from office, shall deliver to his successor all prisoners in his custody, and for that purpose shall retain the keeping of the jails and houses of correction under his care, and of the prisoners therein, until his successor is appointed and qualified.

Upon death of sheriff, jailer to continue in office until, &c.  
Ibid. § 28.

37. In case of the death of the sheriff, the jailer, master, or keeper, by him appointed, shall continue in office and retain the custody, rule, and charge of the jail or house of correction, and of all prisoners committed thereto, until a successor to the deceased sheriff is appointed or elected and qualified, or until the governor, by and with the advice of the council, removes such jailer, master, or keeper, and appoints another.

Compensation of sheriff for care of prisoners, &c.  
Ibid. § 21.

38. For the safe-keeping of the prisoners committed to his custody, the sheriff shall have such compensation from the county, not less than twenty dollars a year, as the county commissioners, or in the county of Suffolk the mayor and aldermen, order. He shall not receive any rent or emolument from the jailers and keepers of the houses of correction, for the use and occupation of the dwelling-houses provided for them by the county.

Salaries of officers, assistants, &c.  
Ibid. § 22.

39. The commissioners, (except in the county of Suffolk,) shall establish fixed salaries for all officers, assistants, and employees, of jails and houses of correction, which shall be in full compensation for all their services, and for which they shall devote their whole time to the discharge of their duties, unless released therefrom by the commissioners.

If inadequate,

40. If the sheriff, master, keeper, or jailer deems any such

salary inadequate, he may present his petition, showing the facts, to the superior court next to be holden for the county, and the court, after notice to the chairman of the county commissioners, and a hearing, shall fix the salary, and pass such further order in the premises as law and justice require.

41. For every prisoner committed or discharged in the county of Suffolk [the jailer shall receive], twenty cents.

Jailer's fees.  
G. S. 157, § 5.

42. Any sheriff who personally performs the duties of jailer or master of the house of correction, may receive, in addition to his salary as sheriff, the compensation established by the provisions of section thirty-nine; *provided*, that in no such case such compensation shall exceed one thousand dollars per year, and all laws inconsistent herewith are repealed.<sup>1</sup>

Sheriff who acts  
as jailer, &c.,  
may receive ad-  
ditional com-  
pensation.  
1860, 92, §§ 1, 2.

43. The jailer, keeper, or master of each jail and house of correction, shall keep in a bound book an exact calendar of all prisoners committed thereto, and shall cause to be distinctly registered therein the names of all prisoners, their places of abode, additions, and the time, cause, and authority of their commitment, and a description of the persons of such as are committed on criminal prosecutions, together with such facts as, with the entries in the prison book, will enable the sheriff or directors to make the returns required by sections eighty-five and eighty-eight. When a prisoner is liberated, he shall register in the same book the time and authority of such liberation, and in case of an escape, the time and manner of the escape. Every jailer, master, or keeper neglecting to keep such calendar, or to enter such facts therein, shall forfeit one hundred dollars, to be recovered by the commissioners or directors in an action of tort, in the name of the county, or in Suffolk in the name of the city of Boston, and expended by them for the relief of discharged prisoners.

Jailer, &c., to  
keep calendar  
of prisoners.  
G. S. 178, § 24.

See § 88.

Penalty for  
neglect.  
Ibid.

44. The keeper of every jail and the master of every house of correction shall keep a record of the conduct of each convict whose term of imprisonment is not less than four months, and

Record of con-  
duct to be kept,  
and term of  
imprisonment

<sup>1</sup> See Act 1862, c. 216, relating to extra fees and compensation of officers who receive a salary, under *Contracts with City Officers*, ante, pp. 124, 125.

reduced in  
certain cases.  
G. S. 178, § 47.

for every month that a convict appears by such record to have faithfully observed all the rules and requirements of the prison, and not to have been subjected to punishment, there shall be deducted from the whole term of his sentence, whether in one or more cases, as follows : from a term of less than three years, one day ; from a term of three and less than seven years, two days ; from a term of seven and less than ten years, four days ; and from a term of ten years or more, five days ; said record shall be submitted to the sheriff and to the overseers of the house of correction, or board of directors for public institutions in the city of Boston, to be considered by them in recommending prisoners to executive clemency.

Wardens, mas-  
ters, &c., to  
keep account of  
moneys, &c.  
1861, 138, § 1.

45. The warden of the state prison, the masters and keepers of the several jails and houses of correction in this commonwealth, shall cause to be kept a book of record in which shall be recorded a correct account of all money or other property, found in the possession of prisoners committed to the aforesaid institutions ; and said officers shall be held responsible to the commonwealth for the safe-keeping and delivery of said property to said prisoners, either upon their order or receipt at any time before or at the time of their discharge therefrom.

Warrants, &c.,  
to be filed, and  
delivered to  
sheriff's suc-  
cessor.  
G. S. 178, § 25.

46. All warrants, mittimus, processes, and other official papers, or attested copies thereof, by which a prisoner is committed or liberated, shall be regularly filed in the order of time, and with the calendar, be safely kept in a suitable box for that purpose, and upon the expiration of the sheriff's commission, his death, resignation, or removal from office, be delivered to his successor ; and in default thereof the sheriff or his executors or administrators shall forfeit two hundred dollars.

Prisons, &c.,  
to be white-  
washed, kept  
clean, &c.  
Ibid. § 31.

47. The keeper of each jail and the master of each house of correction shall, at the expense of the county, see that the same is constantly kept in as cleanly and healthful a condition as may be, and shall cause the whole interior thereof, including the floors, to be thoroughly whitewashed with lime at least twice in each year, and the walls and floors of each room, while any person is confined therein, to be so whitewashed once in each month between the first of May and the first of November. No

permanent vault shall be used in any apartment. Every room occupied by a prisoner shall be furnished with a suitable bucket with a cover made to shut tight, for the necessary accommodation of such prisoner, and such bucket when used shall be emptied daily and constantly kept in good order. G. S. 178, § 31.

48. The keeper and master shall see that strict attention is constantly paid to the personal cleanliness of all prisoners in their custody, and shall cause the shirt of each prisoner to be washed, and the prisoner himself to be shaved, once at least in each week, and to have a weekly bath of cold or tepid water applied to the whole surface of the body, unless by reason of sickness such bath would be hurtful or dangerous. Each prisoner shall be furnished daily with as much clean water as he has occasion for either as drink or for the purpose of personal cleanliness, and with a clean towel once a week. No clothes shall be washed or hung out wet in any room which is occupied by a prisoner during the night. All prisoners not in solitary confinement shall be served three times each day with wholesome food, well cooked, in good order, and in sufficient quantity. Cleanliness of prisoners, their food, &c. Ibid. § 32.

49. Male and female prisoners shall not be put or kept in the same room; nor, unless the crowded state of the jail or house of correction requires it, shall any two prisoners, other than debtors, be allowed to occupy the same room, except for work. Persons committed for debt shall be kept separate from felons, convicts, and persons confined upon a charge of felony or other infamous offence, and all conversation between prisoners in different apartments shall be prevented. Minors shall be kept separate from notorious offenders and those convicted of a felony or other infamous crime. Persons committed on charge of an offence shall not be confined with convicts, and prisoners charged with or convicted of an offence not infamous shall not be confined with those charged with or convicted of an infamous crime, except while at labor or assembled for moral or religious instruction, at which times no communication shall be allowed between prisoners of different classes. Classification and separation of prisoners. Ibid. § 33. See § 62.

50. When a convict is sentenced to solitary imprisonment and hard labor in a jail or house of correction, the master or Execution of sentence to solitary im-

prisonment.  
G. S. 178, § 34.

keeper shall execute the sentence of solitary imprisonment by confining the convict in one of the cells, or if there is none, then in the most retired and solitary part of the jail or house, and during the time of solitary imprisonment the convict shall be fed with bread and water only, unless other food is necessary for the preservation of his health. No intercourse shall be allowed with any convict in solitary imprisonment, except for the conveyance of food and other necessary purposes.

Shall be kept to  
hard labor; but  
not in engraving  
or printing.  
Log and chain  
may be used.  
Ibid. § 35.

51. As soon as the term of solitary imprisonment has expired, the master or keeper shall furnish the convict with tools and materials or other means for work in a suitable manner, in which he can be usefully or profitably employed, either in the house of correction or jail, or in the close yard thereof; but no convict shall be employed in engraving or printing of any kind. Such convict may if necessary be confined by a log and chain, or in such other manner as shall prevent his escape without unnecessarily inflicting bodily pain or interrupting his labor. The overseers, or, when the punishment is inflicted in the jail, the sheriff, shall oversee the execution of all such sentences.

Punishment of  
prisoners refusing  
to work,  
&c.; not to be  
in solitary more  
than three  
days, &c.  
Ibid. § 36.

52. If a convict is refractory, or, during the time for which he is sentenced to hard labor, refuses or neglects without reasonable cause to labor in a suitable manner when required, he shall be kept in solitary confinement and fed on bread and water, as before provided, so long as he is refractory or refuses to labor; but no keeper of a jail or master of a house of correction shall confine in solitary imprisonment any convict for more than three days at one time, without informing the sheriff or overseers thereof and the reasons therefor.

Punishment for  
prisoners  
escaping, &c.  
Ibid. § 46.  
4 Met. 361.  
5 Met. 555.

53. Whoever lawfully imprisoned in any place of confinement established by law, other than the state prison, breaks therefrom and escapes, or forcibly breaks the same with intent to escape, or by force or violence attempts to escape therefrom, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail or house of correction not exceeding three years, or by fine not exceeding one thousand dollars.

Punishment of

54. If a person confined in a jail or house of correction

upon a conviction or charge of an offence against the common-wealth, is refractory or disorderly, or wilfully or wantonly destroys or injures any article of furniture or other property, or any part of such prison, the sheriff, overseers, or board of directors for public institutions, respectively, after due inquiry may cause him to be kept in solitary confinement, not more than ten days for one offence; and during such confinement he shall be fed with bread and water only, unless other food is necessary for the preservation of his health.

55. If a person committed to jail on mesne process or execution, or for any other cause than those mentioned in the preceding section, is on complaint of the keeper convicted before a justice of the peace, or police court, of either of the offences therein specified, he shall be punished by solitary imprisonment as directed in said section, not more than ten days for each offence. He shall also be liable for double the amount of the damage done to the jail, furniture, or other property, to be recovered in an action of tort, which may be brought by the sheriff or county treasurer in the name and to the use of the county.

refractory  
prisoners.  
G. S. 178, § 37.

Punishment of  
poor debtors,  
&c., who com-  
mit depreda-  
tions.  
Ibid. § 38.

56. The two preceding sections shall not affect the authority of a sheriff, jailer, or master of a house of correction, to preserve order and enforce strict discipline among the prisoners in his custody.

Sheriff's and  
keeper's  
authority not  
affected.  
Ibid. § 39.

57. The keeper or master shall, at the expense of the county, provide for each prisoner under his charge who is able and desirous to read a copy of the Bible or of the New Testament, to be used by such prisoner at proper seasons during his confinement, and the county commissioners may, in their discretion and at the expense of their county, provide moral and religious instruction for the prisoners confined in the jails and houses of correction of their respective counties. Prisoners in the state prison, or in any jail, house of correction, almshouse, or other place of confinement, may, in their illness, on request to the warden, keeper, or master, receive the visits of any clergyman they may desire.

Moral and  
religious  
instruction to  
prisoners, &c.  
Ibid. § 40.  
See § 14.

58. The county commissioners of each county, and the aldermen of the city of Boston, with the sheriff of the county,

Instruction in  
reading and  
writing.

G. S. 178, § 41.  
See § 14.

may at the expense of their county or city furnish suitable instructions in reading and writing for one hour each evening, except Sundays, to such prisoners as may be benefited thereby and are desirous to receive the same.

Burial of  
deceased  
prisoners.  
G. S. 178, § 26.

59. When a person imprisoned for any cause dies in prison, the sheriff or the keeper shall deliver the body to his relations or friends, if they request it. If no application is made therefor, the sheriff or keeper shall bury the same in the common burying-ground, and the expenses be paid by the city or town in which such person had a legal settlement, if any, otherwise by the county.

Spirits and  
strong drink  
prohibited,  
unless, &c.  
Ibid. § 42.  
See § 62.

60. No sheriff, jailer, master of a house of correction, or other officer, or under-keeper of a prison, shall, under any pretence, give, sell, or deliver, or knowingly suffer to be given, sold, or delivered, to any person committed to jail for debt and supported at the charge of the creditor, or to a prisoner in confinement upon conviction or charge of an offence, any spirituous liquor or mixed liquor, part of which is spirituous, or any wine, cider, or strong beer, unless the attending physician of the prison certifies in writing that the health of the prisoner requires it, in which case he shall be allowed the quantity prescribed, and no more.

Penalty for fur-  
nishing, or at-  
tempting to  
furnish, spirits,  
&c., to prison-  
ers.  
G. S. 178, § 43.

61. Whoever gives, sells, or delivers to a person confined in a jail, house of correction, house of industry, workhouse, or prison, or to a person in custody of a sheriff, constable, police officer, jailer, master of a house of correction, or warden of a prison, any spirituous or other liquors, as mentioned in the preceding section, or has in his possession, within the precincts of any jail, house of correction, or other place of confinement mentioned in this chapter, any such liquors, with intent to convey or deliver the same to any person or prisoner confined therein, unless under the direction of the physician appointed to attend such prisoner, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the jail or house of correction not exceeding two months.

Penalty for neg-  
lect of duty by

62. If a sheriff, jailer, or master of a house of correction gives, sells, or delivers to any prisoner in his custody, or will-

ingly or negligently suffers such prisoner to have or drink any spirituous, fermented, or other strong or mixed liquor, prohibited by section sixty,<sup>1</sup> or places or keeps together prisoners in his custody of different sexes or classes, contrary to the provisions of section forty-nine,<sup>2</sup> he shall in each case forfeit for the first offence twenty-five dollars, and for any such offence committed after the first conviction fifty dollars, and shall on such second conviction be further sentenced to be removed from office and to be incapable of holding the office of sheriff, deputy-sheriff, or jailer, or master or keeper of any prison, for the term of five years.

63. The sheriffs of the several counties, and the board of directors for public institutions in Boston, shall forthwith remove any officer by them respectively appointed to any position of trust or authority in the jails and houses of correction, who is known to use intoxicating liquors as a beverage.

Officers using  
intoxicating  
liquors to be  
removed.  
Ibid. § 45.

64. If disease breaks out in a jail or other prison, which in the opinion of the inspectors of the prison may endanger the lives or health of the prisoners to such a degree as to render their removal necessary, the inspectors may designate in writing some suitable place within the same county, or any prison in a contiguous county, as a place of confinement for such prisoners. Such designation being filed with the clerk of the superior court, shall be a sufficient authority for the sheriff, jailer, master, or keeper, to remove all the prisoners in his custody to the place designated, and there to confine them until they can be safely returned to the place whence they were removed. Any place to which the prisoners are so removed shall during their imprisonment therein be deemed a prison of the county in which they were originally confined, but they shall be under the care, government, and direction of the officers of the county in which they are confined.<sup>3</sup>

Removal of  
prisoners in  
case of pesti-  
lence.  
Ibid. § 48.  
See pp. 295, 296,  
§§ 25, 26, 30.

65. If a jail or other prison, or any building near thereto, Removal in

<sup>1</sup> Being Gen. Stats. c. 178, § 42.

<sup>2</sup> Being Gen. Stats. c. 178, § 33.

<sup>3</sup> See provisions for removal and returns of removal in case of dangerous diseases, and for the vaccination of prisoners, Gen. Stats. c. 26, on pp. 295, 296, *ante*, §§ 25, 26, 30.

case of danger from fire. is on fire, and the prisoners are exposed to danger thereby, the sheriff, jailer, or other person having charge of the prison, may remove such prisoners to a place of safety, and there confine them so long as may be necessary to avoid the danger, and such removal and confinement shall not be deemed an escape of the prisoners.

G. S. 178, § 49.

#### EXPENSE OF SUPPORTING PRISONERS, ETC.

Commissioners to procure supplies, &c. Ibid. § 50.

66. The commissioners, except in the county of Suffolk, shall, without extra charge or commission to themselves or any person, procure, or cause to be procured, all necessary supplies for the jails and houses of correction, to be furnished and purchased under their direction and at the expense of the county.

Expense of supporting convicts in jails, &c.; how paid. Ibid. § 51. 8 Met. 513.

67. All charges and expenses of safe-keeping, maintaining, and employing, convicts sentenced to imprisonment in the jail or house of correction, of the safe-keeping of persons charged with offences, and, committed for trial or sentence, and, except in the county of Suffolk, of prisoners committed on mesne process or execution, so long as the fees for their board are paid by the defendant or debtor, plaintiff or creditor, shall be paid from the county treasury, the accounts of the keeper or master being first settled and allowed by the commissioners, or in the county of Suffolk by the board of accounts;<sup>1</sup> and no allowance therefor shall be made by the commonwealth.

Advancement of money for tools and materials, &c. G. S. 178, § 52.

68. The county commissioners, and the aldermen of the city of Boston, may order such sums of money as may from time to time be necessary, to be advanced out of the treasuries of their counties or city to the master of the house of correction or keeper of the jail, for the purpose of providing such tools, materials, and other things, as may be required for the employment, restraint, and safe-keeping of the convicts; and the master or keeper shall appropriate the same under the direction of the officers ordering the advancement, and account to them for the expenditure thereof.

Master, &c., to

69. Each master or keeper shall cause the articles manufac-

<sup>1</sup> See *Board of Accounts*, p. 37, *ante*.

tured by the prisoners in his custody, or the produce of their labor, to be disposed of to the best advantage, and under the direction of said commissioners or aldermen shall cause accounts to be kept of the proceeds thereof, and shall present such accounts to them for settlement semi-annually, and as much oftener as they deem it necessary. He shall pay into the treasury of the county or city, at such time as said officers direct, the amount of sales and other proceeds of the labor and earnings of the prisoners in his custody, or the balance thereof.

70. The master or keeper shall furnish, at the expense of the county, necessary fuel, bedding, and clothing for all prisoners in his custody upon charge or conviction of any offence against the commonwealth, and shall present to the county commissioners, or in the county of Suffolk the board of accounts, a full account of his charges so incurred, and also for necessary furniture for the prison; and the commissioners or board of accounts shall make a reasonable allowance therefor, which shall be paid from the county treasury.

Master, &c., to  
supply fuel, &c.  
Allowance  
therefor.  
Ibid. § 54.

71. When the commissioners or the aldermen of the city of Boston direct specific rations or articles of food, soap, fuel, or other necessities, to be furnished to the prisoners, the keeper or master shall conform to such direction, and if he refuses or neglects to furnish the same, he shall be subject for a first and second offence to the penalties prescribed by section sixty-two for the offences therein mentioned.

Master, &c., to  
obey orders for  
furnishing  
specific rations.  
Penalty.  
Ibid. § 55.

72. The board of directors for public institutions in Boston shall from time to time determine what sum the master of the house of correction for the county of Suffolk shall receive for the board of the persons committed to his custody, and the master shall in addition to such board receive such further compensation for his services as the city council of Boston deem just and reasonable.

Compensation  
of master of  
house of  
correction in  
Suffolk.  
Ibid. § 56.

73. In the county of Suffolk the board of directors for public institutions, and in other counties the overseers of the houses of correction, shall twice in each year, and oftener if necessary, examine and audit the accounts for the care and expense of supporting and employing the persons committed to the houses

Overseers, &c.,  
to audit  
accounts for  
support of  
convicts, &c.  
Ibid. § 57.

G. S. 178, § 57. of correction in their county, and certify what sum is due for supporting and employing each person, after deducting the net profit of his labor. If any of said persons refuse or neglect, for fourteen days after demand in writing by the master or keeper, to pay the sum so certified to be due, the commissioners or directors may commence an action of contract in the name of their county, or in Suffolk in the name of the city of Boston, and recover against such person the sum found to be due; but the defendant may prove on the trial that the whole sum allowed and certified by the directors or overseers was not due, and may, as in other cases, tender, bring into court, or offer judgment for, such sum as he admits to be due.

If not paid  
suits to be  
commenced.  
Ibid.

Support of poor  
convicts; how  
recovered of  
kindred, town,  
&c.  
Ibid. § 58.  
18 Pick. 470.  
4 Met. 278.  
5 Met. 54.

74. When they certify that a sum is due for supporting and employing any person who has not sufficient estate to pay the same, such sum may be recovered by the county, or in Suffolk by the city of Boston, of any parent, master, or kindred, by law liable to maintain him. If he is committed for any offence mentioned in section twenty-one of chapter one hundred and sixty-one,<sup>1</sup> or section twenty-seven, *ante*, and has no parent, master, or kindred, liable by law to maintain him, such sum, to an amount not exceeding one dollar a week, may be recovered of the city or town where he has his lawful settlement.

Support of poor  
convicts; how  
recovered of  
kindred, or  
town.  
G. S. 178, § 59.  
20 Pick. 112.  
22 Pick. 211.

75. Upon refusal or neglect to make payment for thirty days after the same is demanded in writing of the parent, master, or kindred, or of any member of the city council of the city, or any overseer of the poor of the town, respectively liable by law therefor, the county, or in Suffolk the city of Boston, at any time within two years after the account has been so certified, and not afterwards, may commence and maintain an action for the same, against the party so liable, in the form of action and subject to the defence prescribed and allowed in section seventy-three.

Support of poor  
convicts; notice  
to town liable  
for.  
G. S. 178, § 60.

76. When a person is committed for whose support a city or town may be liable under section seventy-four, the master or keeper shall immediately give notice thereof in writing, by mail

<sup>1</sup> Chap. 161 of the General Statutes.

or otherwise, to the mayor and aldermen or selectmen of such G. S. 178, § 60. city or town.

77. Jailers and masters of houses of correction shall have a Jailers, &c., to prison book, in which they shall keep an account of the value of <sup>c keep a prison book, &c.</sup> labor of the prisoners, and salaries of officers; and also of arti- <sup>Ibid. § 61.</sup> cles furnished for the support of the prisoners, the quantity, of whom bought, and price paid, classified as follows: First, cost of provisions including the portion consumed by the family of the jailer or master; Second, cost of clothing; Third, cost of beds and bedding; Fourth, cost of medicines; Fifth, cost of medical attendance; Sixth, cost of instruction, religious or otherwise; Seventh, cost of fuel; Eighth, cost of light; Ninth, allowance to discharged prisoners; Tenth, allowance to witnesses in money or clothing. The prison book, verified by the oath of the jailers or masters, shall be exhibited to the commissioners or directors, when their accounts are presented for examination, and at other times when demanded. A jailer or master <sup>Penalty for neglect.</sup> who neglects to keep such book, or to enter therein such facts, <sup>Ibid.</sup> or wilfully makes any false entry therein, shall forfeit one hundred dollars, to be recovered by the directors or commissioners in an action of tort in the name of the county, or in Suffolk of the city of Boston, and expended by them for the relief of discharged convicts.

#### INSPECTORS OF PRISONS.

78. The commissioners for the several counties, and in the county of Suffolk the judge of the probate court and the justices <sup>Inspectors of prisons, &c.</sup> of the police court, shall be inspectors of the prisons in their <sup>Ibid. § 62.</sup> counties.

79. The keeper, master, or superintendent, of each jail, <sup>Keepers, &c., to make stated returns.</sup> house of correction, or other place of confinement required to be <sup>Ibid. § 63.</sup> inspected, shall at least twice in each year make returns to said inspectors, at such time and in such form as they direct, setting forth the name, age, and residence, if known, of each person who is or has been in custody since the last return, the cause of imprisonment, and the manner in which he has been treated and

G. S. 178, § 63. employed, the punishments inflicted, and the names of all persons who have died, escaped, been pardoned, or discharged, with all other circumstances required by the inspectors.

Inspectors  
of prisons,  
powers and  
duties of.  
Ibid. § 64.

80. The commissioners shall twice in each year, at intervals not exceeding eight months, by themselves or a committee of not less than two of their members, visit and inspect all the prisons in their county, and fully examine into everything relating to the government, discipline, and police, thereof. The committee shall as soon as may be after each inspection make and subscribe a detailed report to the commissioners, stating the condition of each prison as to health, cleanliness, and discipline, at the time of inspection; the number of persons confined there within the six months next preceding, or since the last inspection, and for what causes; the manner in which any convicts have been employed; the number of persons usually confined in one room; the distinction, if any, usually observed in the treatment of the different classes of persons detained in such prisons; the punishments inflicted; any evils or defects in the construction, discipline, or management, of such prisons; the names of the prisoners who have died, escaped, been pardoned, or discharged; and whether any of the provisions of law in relation to such prisons have been violated or neglected, with the causes, if known, of such violation and neglect.

Inspectors of  
prisons  
in Suffolk.  
Ibid. § 65.

81. The inspectors in the county of Suffolk shall at the times and in the manner mentioned in the preceding section, by a committee of not less than three of their members, visit and inspect the jail, house of correction, and all other places of imprisonment and confinement established by law in the city of Boston. The committee shall as soon as may be after each inspection make and subscribe such a detailed report to the aldermen, in relation to the prison in the city of Boston, as is required by the preceding section to be made to the commissioners in their respective counties.

Inspectors to  
have access to  
books, ac-  
counts, prison-  
ers, &c.  
Ibid. § 66.

82. When the inspectors, or any of them, visit any of said prisons, either for the purpose of inspection or any other cause, the sheriff, master, keeper, or other officer having charge thereof shall admit them when required into every apartment of such

prison, exhibit all books, precepts, documents, accounts, and papers, relating to the concerns of the prison, or to the detention or confinement of any person therein, which may be required, and afford to them such aid as may be requested in the performance of any part of their duties. The inspectors or their committee may examine on oath to be administered by one of them, either by interrogatories in writing to be answered in writing and subscribed, or otherwise as they may direct, any officer, keeper, or other person, in relation to the concerns or management of any prison; they may also, apart and without the presence of any officer or keeper, converse with any of the prisoners.

83. If it appears to the inspectors, from the report of their committee or otherwise, that any of the provisions of law in relation to prisons have been violated or neglected in their county, they shall forthwith give notice thereof to the district-attorney.

Inspectors to notify district attorney of violations of law. Ibid. § 67.

#### RETURNS.

84. The inspectors shall on or before the fifteenth day of October in each year cause to be transmitted to the governor authentic copies of any information by them given to the district-attorney in relation to any violation or neglect of the law respecting prisons, and a statement of the expenses incurred in providing moral and religious instruction for the prisoners confined in the jails and houses of correction in their respective counties, with such further statements and suggestions as may in their opinion require the attention of the government.

Inspectors to make annual returns to governor. Ibid. § 68.

85. The secretary of the commonwealth shall annually in the month of September, or before, furnish to the sheriffs and board of directors for public institutions in the city of Boston, blank forms of returns concerning jails and houses of correction, for the year ending on the last day of September, containing the following interrogatories, and with the two following sections printed thereon.

Blank forms of returns to be furnished by secretary. Ibid. § 69. 1802, 220, § 1.

## JAILS.

Returns relating to jails.  
G. S. 178, § 69,  
1862, 220, § 1.

Number of prisoners October first ; committed during the year ; males, females ; adults, minors ; whites, colored ; natives of this state, natives of other states, natives of other countries ; unable to read or write ; married ; intemperate ; been in prison before ; committed as insane ; for debt ; as witnesses ; for trial or examination ; on sentence. Committed for murder ; manslaughter ; setting fires ; robbery ; larceny ; burglary ; rape ; attempt at rape ; adultery ; lewd conduct ; keeping houses of ill-fame ; assault ; perjury ; forgery ; making or passing counterfeit money ; drunkenness ; as common drunkards ; for violation of the liquor law ; for all other offences. Discharged by writ of *habeas corpus* ; by being recognized or bailed ; by expiration of sentence ; by payment of fines and costs ; as poor convicts unable to pay fines and costs ; pardoned ; transferred to other places for trial ; sent to court and not returned ; executed. Sent to the state prison ; to the house of correction ; to the state reform school ; to the nautical branch of the state reform school ; escaped and not retaken ; debtors discharged on payment of debt ; by taking poor debtor's oath ; by order of creditor ; witnesses discharged ; prisoners that have died ; discharged by processes not specified above ; remaining in confinement September thirtieth. Average number of prisoners.

Same subject.

Amount expended for provisions ; for clothing ; light ; fuel ; medicines and medical attendance ; beds and bedding ; instruction ; officers' salaries ; amount allowed to discharged prisoners ; to witnesses ; expended for other purposes not herein enumerated ; total amount of expenses of all kinds. Value of the labor of prisoners. Nature of instruction given. Number of volumes in the library. Number of prisoners punished for misdemeanors while in prison.

## HOUSES OF CORRECTION.

Returns relating to houses of correction.  
1862, 220, § 1.

Number in confinement October first ; committed during the year ; males, females ; adults, minors ; whites, colored ; natives of this state, natives of other states, natives of other countries ;

unable to read or write; married; intemperate; insane; when committed; became insane in prison; been in prison before; committed for adultery; lewd conduct; keeping houses of ill-fame; assault; violation of the liquor law; drunkenness; as common drunkards; for larceny; vagrancy; all other offences. Discharged on expiration of sentence; on payment of fines and costs; as poor convicts unable to pay fines and costs; on *habeas corpus*; on account of sickness; on account of insanity; by order of overseers; pardoned; escaped and not retaken; discharged by processes not specified above; died; remaining in confinement September thirtieth. Average number of prisoners.

Amount expended for provisions; clothing; fuel; light; medicines and medical attendance; beds and bedding; instruction; officers' salaries; amount allowed to discharged prisoners; expended for other purposes not before enumerated; total amount of expenses of all kinds. Value of labor of prisoners. Nature of instruction given. Number of volumes in the library. Number of prisoners punished for misdemeanors while in prison.

86. The board of county commissioners in any county, when applied to therefor by the sheriff, shall make a return to him on or before the tenth day of October, of the amount expended by them or with their approval, under their authority, to provide all necessary supplies for the jails and houses of correction, for each of the purposes specified in the preceding section.

Commissioners shall make returns to sheriff. Ibid. § 2.

87. The provisions of sections eighty-nine and ninety<sup>1</sup> shall apply to the two preceding sections; and every county commissioner, when his board neglects to make the return required by section eighty-six shall be subject to a like forfeiture, to be recovered in the same manner, and applied to the same object as is provided in said sections eighty-nine and ninety.<sup>1</sup>

Provisions of sects. 89, 90 apply to sects. 85, 86. Ibid. § 3. See §§ 89, 90.

88. On or before the fifteenth day of October in each year, in the county of Suffolk, the board of directors for public institutions shall, in relation to houses of correction, and the sheriff in relation to jails, and in each of the other counties the sheriff

Sheriffs, &c., to make returns. Abstract. G. S. 178, § 70. See § 43.

<sup>1</sup> The two sections mentioned in the text are §§ 71 and 72 of Gen. Stats. c. 178, which are §§ 89 and 90, *post*.

G. S. 178, § 70. in relation to both jails and houses of correction, shall make and transmit to the secretary of the commonwealth true answers to the inquiries contained in the blanks mentioned in section eighty-five. The secretary shall prepare and transmit an abstract thereof, in a printed form, to the legislature at the ensuing session thereof.

Penalties for neglect.  
Ibid. § 71.  
See § 87.

89. Every sheriff who omits to make and transmit, according to the preceding section, true answers to such inquiries, and every director, when his board omits to make and transmit such answers, shall forfeit one hundred dollars.

Prosecution of delinquents.  
G. S. 178, § 72.  
See § 87.

90. The secretary, when he finds that a sheriff or director is liable to a forfeiture under the preceding section, shall forthwith notify the district-attorney for the district in which such overseer or director resides, who shall immediately institute a complaint therefor, and the forfeiture recovered shall be applied by the county for the relief of discharged convicts.

#### COMMITMENTS AND DISCHARGES.

Courts may sentence to jail or house of correction.  
G. S. 174, § 4.  
2 Met. 419.  
4 Met. 361.

91. Whoever is convicted of an offence punishable wholly or in part by imprisonment in the jail, may be sentenced to suffer such imprisonment in the house of correction instead of the jail, or to suffer solitary imprisonment and be confined at hard labor either in the jail or house of correction.

Same subject.  
G. S. 174, § 5.

92. Whoever is convicted of a crime punishable by fine and liable to imprisonment in the jail for the non-payment of fine and costs of prosecution, may be sentenced to suffer such imprisonment in the house of correction instead of the jail, and confined at hard labor either in the jail or house of correction.

Conditional sentences.  
Ibid. § 6.  
23 Pick. 280.  
2 Met. 411, 412.  
5 Met. 560.

93. When a person is convicted of an offence punishable at the discretion of the court, either by fine or imprisonment in the jail or house of correction, or by fine or imprisonment in the state prison, the court or justice may award against such offender a conditional sentence, and order him to pay a fine with or without the costs of prosecution, within a limited time to be expressed in the sentence, and in default thereof to suffer such imprisonment as is provided by law.

94. The person against whom any such conditional sentence is awarded shall be forthwith committed to the custody of an officer in court or to the jail, to be detained until the sentence is complied with ; and if he does not pay the fine and costs imposed within the time limited, the sheriff shall cause the other part of the sentence to be executed forthwith.

Same subject.  
G. S. 174, § 7.

95. When it is provided that an offender shall be punished by imprisonment in the jail and a fine, or by imprisonment in the house of correction and a fine, such offender, unless convicted under chapter eighty-six,<sup>1</sup> may at the discretion of the court be sentenced to be punished by such imprisonment without the fine, or by such fine without the imprisonment.

Court may impose fine or imprisonment, except, &c.  
Ibid. § 8.

96. When a person is ordered to be imprisoned for non-payment of a fine, or fine and costs, not exceeding twenty dollars, the court or magistrate ordering such commitment shall inquire as to the ability of the defendant to pay the same, and if it appears that he is unable, it shall be so certified upon the mittimus.

Magistrate to certify if convict is unable to pay fine, &c.  
Ibid. § 9.  
See § 98.

97. When a poor convict has been confined in a prison or house of correction for three months, for fine and costs only, or for either of them, the jailer or master shall make a report thereof, in the county of Suffolk to the police court of the city of Boston, and in other counties to any two justices of the peace, one of whom shall be of the quorum, or to any police court. The court or justices shall proceed to make inquiry into the truth thereof, and may require the jailer or keeper to bring the convict before them at the prison or such other convenient place near thereto as they may direct. If satisfied that the statement in the report is true and that the convict since his conviction has not had any estate, real or personal, with which he could have paid the sum for which he is committed, and that he is held for no other cause, they shall make a certificate thereof to the sheriff, directing him to discharge the convict.

Poor convicts, how discharged from prison after three months.  
G. S. 180, § 6.

98. When a poor convict has been confined in a prison or house of correction thirty days for fine, or fine and costs, not

How convicts discharged after thirty days.

<sup>1</sup> Chap. 86 of the General Statutes concerning the manufacture, sale, &c., of intoxicating liquors.

G. S. 180, § 7.  
See § 96.

exceeding ten dollars, or forty days for fine, or fine and costs, not exceeding twenty dollars, he shall be discharged if the justice or court has certified on the mittimus upon which he was committed that he is unable to pay the same. When such convict has been confined thirty days, and the justice or court has not so certified, the jailer or master shall make report thereof to a justice of the peace and of the quorum, or to a police court, and such justice or court shall proceed therein and may discharge the convict in the manner prescribed in the preceding section.

Poor convicts  
discharged at  
any time in the  
county of Suf-  
folk, when, &c.  
G. S. 180, § 8.

99. The justices of the police court of the city of Boston when assembled, may also at any time discharge from prison or the house of correction in the county of Suffolk, any convict held only for the non-payment of fine and costs, if it appears that he is poor and unable to pay the same; *provided*, that when such person is held under the sentence of any other court, the consent of one of the justices thereof shall be first given in writing.

Persons under  
guardianship,  
how dis-  
charged.  
Ibid. § 9.

100. A person under guardianship may have the benefit of the provisions of the three preceding sections, although it appears that he has property held under guardianship, if it also appears that such property is beyond his actual control.

Fine and costs  
may be recov-  
ered of  
guardian.  
Ibid. § 10.

101. When a person is discharged under the preceding section, the commonwealth may, in an action of tort brought within one year after the discharge, recover against his guardian, if he has assets, the amount of fine and costs remaining unpaid.

Fees for  
discharge.  
Ibid. § 11.

102. The fees of the justices for discharging a convict under this chapter, shall be one dollar to each justice, and for travel five cents for each mile going and returning, which shall be taxed, allowed, and paid in the same manner as other costs arising before justices of the peace in criminal cases.<sup>1</sup>

Discharged  
convict paupers  
to be removed  
to almshouses  
in certain cases.  
G. S. 71, § 40.

103. When a convict discharged from the state prison or any jail or house of correction, having no settlement in this state known to the warden, keeper, or master thereof, is at the time of his discharge incompetent, by reason of age, infirmity, or disease to support himself by labor, such warden, keeper, or

<sup>1</sup> The city council have, with the concurrence of the justices of the police court, established a fixed sum for each justice of said court as a compensation for the duty required in § 99.

master shall cause him to be removed to one of the state almshouses; the expense of which removal shall be certified to the auditor of the commonwealth, upon whose approval thereof the same shall be paid out of the treasury. G. S. 71, § 40.

104. Any convict who at the legal expiration of his imprisonment is in a condition, from bodily infirmity or disease, to render his removal as aforesaid impracticable, shall be provided for and receive such treatment, in the state prison, jail, or house of correction, as the exigency of the case may require, until he is in a condition to be removed according to the provisions of the preceding section. Convicts too sick to be removed, how to be provided for. Ibid. § 42.

LUNATICS IN PRISONS.

105. When a convict in a prison other than the state prison, or in the house of correction, appears to be insane, the physician attending the prison or house of correction shall make a report thereof to the jailer or master, who shall transmit the same in the county of Suffolk to a judge of the superior court, and in any other county to the judge of the probate court. The judge shall make inquiry into the facts therein stated, and if satisfied that such convict is insane, he may, at any time he deems necessary, cause such prisoner to be removed to one of the state lunatic hospitals. Insane persons in prison, how removed to hospital. G. S. 180, § 4.

106. If a person so removed is restored to sanity before the expiration of his sentence, he shall be forthwith returned to the prison or house of correction from which he was removed, there to remain pursuant to his original sentence, computing the time of his confinement in the hospital as part of the term of his imprisonment. If sane before term expires, to be returned. Ibid. § 5.

BOARD OF DIRECTORS FOR PUBLIC INSTITUTIONS IN BOSTON.

107. There shall be elected by the city council of the city of Boston, by concurrent vote, twelve suitable persons, resident citizens of the said city, who shall constitute a board of directors for the houses of industry and reformation and the lunatic hospital, within said city, and the house of correction for the county of Suffolk. The said board shall be styled "The Board of Directors for the public institutions to be chosen. 1857, 35, § 1.

Their powers  
and duties.  
1857, 35, § 1.

A majority a  
quorum.

May discharge  
the insane.  
Ibid. § 2.

City council  
may pass  
ordinances.  
Ibid. § 3.

City council to  
elect directors  
and term of  
office.  
Ibid. § 4.

Directors for Public Institutions," and shall have all the authority and powers, and be subject to all the duties now conferred and imposed by virtue of existing statutes, respectively, upon the directors of said houses of industry and reformation and the overseers of said house of correction; together with such other powers and duties in connection with said lunatic hospital and the management of the business thereof as the said city council may, by ordinance and in conformity to the statutes of the commonwealth, provide.<sup>1</sup> A majority of said board of directors shall constitute a quorum for the transaction of business; and upon the election of the first board, as provided in the fourth section of this act, said city council shall be discharged from all obligations of statutes now existing requiring the election or appointment of directors or overseers for either of said institutions.

108. The said board of directors shall also have the same powers, as to the discharge of insane persons from confinement, as are now vested in the mayor and board of aldermen of said city.<sup>1</sup>

109. The said city council shall have power to pass such ordinances, not inconsistent herewith or repugnant to other laws of this commonwealth, as to the duties and authority of said board of directors, and providing for their reasonable compensation, as it may from time to time deem expedient and necessary.

110. Said city council shall proceed, after the acceptance of this act, to elect by ballot nine citizens at large, three of whom shall be elected and hold their office for three years, three for two years, and three for one year; and these persons, together with one member from the board of aldermen and two members from the common council of said city, to be elected for one year by the said city council, shall constitute the first board of directors under this act; and thereafter annually the said city council shall elect in the manner aforesaid, three citizens of said city, at large, who shall hold their office in said board of directors

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<sup>1</sup>See *House of Industry*; *House of Reformation*; *Lunatic Hospital*.

for three years, and one member of the board of aldermen and two members of the common council of said city, who shall hold their office in said board of directors for one year. Each of the said directors, so elected under this act, shall, in addition to his said term, hold his office until another is elected in his stead; and the said city council shall have power to remove members from said board of directors, for cause shown, and to fill all vacancies which may occur in the same.

111. This act shall not go into effect, unless accepted by said city council within six months from its passage, and shall take effect directly upon and after such acceptance.<sup>1</sup>

Act to be  
accepted.  
Ibid. § 5.

112. All acts and parts of acts inconsistent herewith are hereby repealed.

Repeal of  
other laws.  
Ibid. § 6.

113. The board of directors for public institutions of the city of Boston, comprising the house of correction, house of industry, house of reformation, and lunatic hospital, is hereby authorized, at its discretion, to transfer from any one of the said institutions, to any other of said institutions, any prisoner sentenced to either of the same; *provided*, the assent of the court or magistrate that committed said prisoner, shall first be obtained to such removal.<sup>2</sup>

Directors may  
remove persons  
from one insti-  
tution to  
another.  
1858, 112.

#### ORDINANCE.<sup>3</sup>

SECTION 1. There shall be a board of directors to be styled "The Board of Directors for Public Institutions," consisting of twelve suitable persons, residents of the city of Boston, who shall have charge of the house of correction, house of industry, house of reformation, and lunatic hospital, and of such other institutions as may be placed under their direction, by the city council.

Board of direc-  
tors for the pub-  
lic institutions.  
Dec. 12, 1862.

Said directors shall be elected annually in the month of

Election, &c.

<sup>1</sup> Accepted March 31, 1857.

<sup>2</sup> The powers granted by § 113 have never been exercised by the directors, as the constitutionality of the act has been seriously questioned.

<sup>3</sup> An ordinance in relation to the public institutions, passed December 12, 1862.

Dec. 12, 1862.	January, or as soon thereafter as may be, by concurrent vote of the city council, as follows : three from the citizens at large for the term of three years each, one from the board of aldermen for one year, and two from the common council for one year each, from the first of January in the year they are chosen, or until others are elected ; but each of them shall at all times be subject to removal by the city council for cause.
Tenure of office. Ibid.	A director chosen from the board of aldermen or common council who shall, during the term for which he was elected to the city council, cease to be a member of the same shall
Vacancies. Ibid.	also cease to be a member of this board. Any vacancy in said board of directors occasioned by non-acceptance of office, resignation, death, or otherwise, shall be filled by concurrent vote of the city council whenever any such vacancy may occur ; and the board of directors shall notify the city council of such vacancy within one month after its occurrence.
Organization. Ibid.	SECT. 2. Immediately after the election of directors, as provided in section one, the board shall annually organize by the choice of one of their own number for president, and shall also
Clerk, his duties. Ibid.	appoint a clerk of the board, who shall keep a record of their proceedings. A majority of the whole board shall be necessary to constitute a quorum for the transaction of business.
Powers and duties of the directors. Ibid.	SECT. 3. The said board of directors shall have and exercise all the powers conferred, and be subject to all the duties imposed by existing laws in relation to the house of industry, house of reformation, lunatic hospital, and the overseers of houses of correction, and which may be conferred by this ordinance, and by future laws and ordinances. <sup>1</sup>
Directors to have charge of records, make rules and regu- lations, appoint officers.	SECT. 4. The said board of directors shall have charge of all books, papers, property, and things pertaining to the afore-
Compensation.	said institutions, and shall make all needful rules and regulations for the government and management of the same, and employ such subordinate officers, agents, and assistants as they may deem expedient, and fix the compensation for each ; <i>provided,</i>

<sup>1</sup> See post., *House of Industry*, p. 372 ; *House of Reformation*, p. 376 ; ante, *Lunatic Hospital*, p. 329.

*however*, that the compensation of all persons employed shall be subject to the control of the city council. No rule or regulation made by said board shall take effect until it shall have been approved by the city council, nor shall it remain in force after it shall have been disapproved by the city council.<sup>1</sup> Until new rules and regulations have been approved, those now in use at the several institutions shall remain in force.

Dec. 12, 1862.

Approved by  
city council.  
*Ibid.*

SECT. 5. Annually, in the month of February, and whenever a vacancy may occur, the board shall elect some suitable physician as superintendent of the lunatic hospital, removable at their pleasure, who shall receive such compensation as the city council may determine. He shall constantly reside at the hospital, and shall perform the duties of physician to such other institutions under the charge of the board as the directors shall require. He shall, subject to the approval of the board, appoint his assistants, subordinate officers, and attendants, and shall have charge and control of the hospital, grounds, buildings, and appurtenances, and of all patients, subordinate officers, attendants, and domestics.

Superintendent  
of lunatic hos-  
pital to be elect-  
ed; his duties  
and powers.  
*Ibid.*

SECT. 6. The said board of directors shall make all necessary repairs and alterations in the several buildings, and make improvements in the grounds connected with the buildings under their charge, provided the expense thereof shall not exceed the amount appropriated therefor by the city council; but they shall not incur any expense for the erection or repair of structures, or for the improvement or ornament of the grounds, by which they shall exceed the appropriation therefor, without first obtaining the approval of the city council.

Directors may  
make repairs,  
&c.  
*Ibid.*

Expense  
limited.  
*Ibid.*

SECT. 7. Whenever it shall be necessary to procure supplies, material, services, or labor for the said institutions, all due care shall be used to procure the same at the lowest market price. When the supplies or materials to be obtained shall exceed in value the sum of three hundred dollars, the board shall advertise in the newspapers employed by the city to publish its advertisements, for sealed proposals to furnish such

Supplies, how  
to be procured.  
*Ibid.*

<sup>1</sup> For rules and regulations, see *Supplement*.

Dec. 12, 1862.

supplies or materials, describing particularly the quality and quantity required, and the times and places of delivery. Such proposals as may be received shall be opened at a public meeting of the board, and the contracts shall be awarded to the lowest bidder; *provided*, the board shall deem it for the best interest of the city; and the party contracting shall furnish satisfactory security for its faithful performance. No member of the board,<sup>1</sup> either directly or indirectly, for himself personally, or in trust for any other person, shall have any pecuniary interest in furnishing supplies for the institutions, or in any contract for the same.

Directors shall  
make quarterly  
and annual  
reports.  
Ibid.

SECT. 8. The said board of directors shall make a report quarterly, to the city council, of their expenditures for each of the institutions, and annually, in the month of January, make a report in print, of the expenditures and receipts of each institution for the previous year, giving the condition of each institution, with the number of inmates admitted thereto and discharged therefrom, the births and deaths therein during the year, and the number remaining on the first of January, together with such other information pertaining thereto as they shall deem of public interest.

Repeal of other  
ordinances.  
Ibid.

SECT. 9. All ordinances and parts of ordinances inconsistent with this ordinance are hereby repealed.<sup>2</sup>

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## HOUSE OF INDUSTRY.

### STATUTES.

1. Directors, nine in number, of house of industry to be chosen; vacancies to be filled. Superintendent and other officers. Powers and duties.
2. Directors may bind out children

and have all the powers of overseers of the poor relating to paupers.

3. Police court authorized to sentence to house of industry, rogues, vagabonds, &c.
  4. Same.
- 

<sup>1</sup> See *Contracts with City Officers*, pp. 124-126, *ante*.

<sup>2</sup> The ordinances passed August 25, 1857, and December 16, 1859.

- |   |   |
|---|---|
| 5. Directors to make reports to city council; and rules and regulations to be approved by city council.<br>6. Directors increased to twelve, vacancies; powers, and duties, as provided in former acts. | 7. Expenses of support of paupers in house of industry, how recovered.<br>8. Powers, duties, rights, &c., of directors transferred to board of directors for public institutions. |
|---|---|

## STATUTES.

1. The house of industry that was located in that part of the city called South Boston, was completed in 1822;<sup>1</sup> and by a special act of the legislature, passed February 3, 1823, the city council were authorized to choose nine directors of the house of industry, who "should have and exercise the like authority and power in using, regulating, and governing said house of industry as are had and exercised by overseers of the poor within this commonwealth, and may send such persons to said house and for such purposes as overseers of the poor are by law authorized to do."<sup>2</sup>

Directors of house of industry to be chosen; their powers and duties.  
1822, 56, §§ 1, 2.

2. By an act passed March 5, 1827, it was further provided that the directors of the house of industry in the city of Boston should have and exercise all the powers and perform all the duties relative to paupers, and the binding out of children and other persons committed to said house of industry for support, as the overseers of the poor of the several towns in this commonwealth had and exercised in relation to paupers and the binding out of children and other persons under and by virtue of the several laws of this commonwealth; and all acts of said directors should impose the same duties, liabilities, and obligations in all judicial tribunals, on the city of Boston aforesaid, and on the several towns and individuals of this commonwealth as the same acts would impose if done and performed

Powers and duties of the directors as to binding out children.  
1826, c. 111.

<sup>1</sup> The house of industry was removed from South Boston to Deer Island, in November, 1853.

<sup>2</sup> For the general powers and duties of overseers of the poor relating to the support of paupers and the binding out of children, see *Paupers*, post. For their powers in the city of Boston, and their duties as a corporate body to hold and manage trust funds, see *Overseers of the Poor*, post. See also Gen. Stats. cc. 70, 111.

1826, c. 111.

in the same manner by the overseers of the poor of the several towns in this commonwealth.<sup>1</sup>

Police court  
may commit to  
house of  
industry.  
1822, 56, § 3.

3. By the act of February 3, 1823, before mentioned in section one, it was provided that the justices of the police court in the city of Boston should have and exercise the like authority and power, in ordering commitments to said house of industry, as were vested in justices of the peace as to commitments to houses of correction, according to the provisions of "An act for suppressing and punishing rogues, vagabonds, common beggars, and other idle, disorderly, and lewd persons," passed March 26, 1788.<sup>2</sup>

1787, 54, § 1.

Police court  
further author-  
ized to sentence  
to house of  
industry.  
1860, 199.

4. An act passed April 4, 1860, concerning imprisonment in the county of Suffolk, provides that in all cases in which the police court of the city of Boston is authorized to sentence to imprisonment in the house of correction or county jail, or commitment thereto for non-payment of fine and costs, said court may instead, at their discretion, sentence to imprisonment in the house of industry for the city of Boston, or commitment thereto.

Directors to  
make reports,  
rules to be  
approved by  
city council.  
1822, 56, §§ 4,  
5, 6.

Directors of  
the house of  
industry to  
be chosen.  
1833, 126, § 1.

5. The directors were required to make an annual report to the city council of the inmates and the expenses, and that the rules and orders for the governing and managing the house of industry should be approved by the city council.

6. By an act passed March 16, 1833, the city council were empowered, whenever they deemed it expedient, to appoint, by concurrent ballot in each board, a sufficient number of persons, not exceeding twelve,<sup>3</sup> a majority of whom should constitute a quorum for the transaction of business, to be directors of the house of industry in the said city, who should hold their office for the term of one year, and until others were appointed in their place; and said city council were further empowered, in like manner to fill all vacancies which might occur in said

Vacancies to be  
filled.

<sup>1</sup> See note <sup>2</sup> on preceding page.

<sup>2</sup> For the authority of the justices of the several courts to commit offenders to the house of industry, see *Houses of Correction and Jails*, ante.

<sup>3</sup> The act of 1822, c. 56, limited the number of directors to nine. See § 1 in the text.

board of directors during the year for which it was appointed. 1833, 126, § 4  
 And said directors might appoint a superintendent, and any  
 other officers necessary for the government of said house, and Superintendent  
and other  
officers.  
 should have all the powers, and be subject to all the duties  
 prescribed to said board by virtue of the several acts to which  
 it was in addition.

7. By an act passed June 12, 1824, it was provided that Recovery of  
expenses for  
the support of  
paupers.  
1824, 28, § 1.  
 the city of Boston should be entitled to the same remedies in  
 order to recover the expenses of supporting any poor person  
 maintained in the house of industry of said city that towns in  
 this commonwealth were entitled to for the recovery of the  
 expenses of persons for whom support or relief was provided  
 by overseers of the poor, or under their direction.<sup>1</sup>

8. The provisions contained in sections one and six relating Powers duties,  
&c., transferred  
to new board  
of directors.  
1857, 35, §§ 1-10.  
 to the choice of directors for the management of the house of  
 industry, and the provisions in section five relating to reports of  
 the directors and rules and orders, are superseded by other pro-  
 visions contained in an act passed March 28, 1857,<sup>2</sup> whereby all  
 the public institutions in the city of Boston, viz: the houses of  
 industry and reformation, the lunatic hospital, and the house of  
 correction for the county of Suffolk, were placed under the con-  
 trol of one board, to be styled "The Board of Directors for  
 Public Institutions," and to have all the authority and powers, Their powers  
and duties.  
 and to be subject to all the duties now conferred and imposed  
 by virtue of existing statutes, respectively, upon the directors  
 of the houses of industry and reformation and the overseers of  
 the house of correction, together with such other powers and  
 duties in connection with the lunatic hospital as the city council  
 may provide.

<sup>1</sup> For the recovery of expense for support of paupers, see *Paupers*, post.  
 In case inmates of the house of industry die, for the notice to be given  
 and the disposition of the bodies, see ante, *Health*, pp. 301, 302, §§ 61-65.

<sup>2</sup> For the Act of March 28, 1857, c. 35, and another Act relating to the public  
 institutions passed March 27, 1858, c. 112, see *Houses of Correction and Jails*,  
 ante, pp. 367-369, §§ 107-113.

For the ordinance of the city relating to the public institutions, see *Houses  
 of Correction and Jails*, ante, pp. 369-372.

For matters relating to the house of reformation and lunatic hospital, see  
*House of Reformation*, post, p. 376, and *Lunatic Hospital*, ante, p. 329.

## HOUSE OF REFORMATION.

## STATUTES.

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. City council may erect or use buildings in the city, for juvenile offenders.</li> <li>2. Children convicted of criminal offences may be received by directors.</li> <li>3. Children leading an idle or dissolute life, &amp;c., may be sentenced to the house of reformation. To be kept, &amp;c., till of age.</li> <li>4. Directors to employ and instruct children. Shall have power to bind out. To have powers, &amp;c., of overseers of the poor.</li> <li>5. Court may discharge on recommendation of directors.</li> <li>6. Children already committed to house of correction may be transferred to house for juvenile offenders.</li> </ol> | <ol style="list-style-type: none"> <li>7. Separate branch for females may be established.</li> <li>8. Appeal from judgment of the police court, under the second section, to the municipal court.</li> <li>9. Children leading an idle or dissolute life, &amp;c., may be sentenced to house of reformation.</li> <li>10. Right of appeal saved.</li> </ol> |
|--|---|

## ORDINANCE.

1. Directors of house of industry appointed directors of house of reformation. House of reformation united with Boylston Asylum.
2. Rights and power of directors.
3. Separate branch for females established.

## STATUTES.

City council may erect or use buildings in the city for juvenile offenders.  
1825, 182, § 1.

1. By an act passed March 4, 1826, the city council of the city of Boston were authorized to erect a building in said city for the reception, instruction, employment, and reformation of such juvenile offenders as were thereafter named in said act; or to use for these purposes the house of industry, or correction, at South Boston, or any other house or building belonging to said city that the city council might appropriate to these uses.

Children convicted of criminal offences may be received by directors.  
Ibid. § 2.

2. The directors of the said house of industry, or such other persons as said city council shall appoint directors of said house for the employment and reformation of juvenile offenders,<sup>1</sup> shall have power, at their discretion, to receive and take into said house all such children who shall be convicted of criminal of-

<sup>1</sup> The powers granted in § 2 are now vested in the board of directors for public institutions. See *ante*, pp. 367-369, §§ 107-113; pp. 369-372, §§ 1-9.

fences or taken up and committed under and by virtue of an act 1825, 182, § 2. of this commonwealth “for suppressing and punishing of rogues, vagabonds, common beggars, and other idle, disorderly, and lewd persons,”<sup>1</sup> and who may, in the judgment of any justice of the supreme judicial court, sitting within and for the county of Suffolk, or of the judge of the municipal court<sup>2</sup> of the city of Boston, or of any justice of the police court within and for the city of Boston, be proper objects therefor; and upon the conviction or commitment aforesaid of any child in the judgment of such judge or justice a proper object for the said house of employment and reformation, the said judge or justice, previously to declaring the sentence of the law on such child, shall cause notice to be given to the directors of the said house; and in case the said directors shall declare their assent to the admission of such child into said house, the said judge or justice shall sentence him or her to be committed to said house of employment and reformation, subject to the control of the directors thereof, in conformity with the provisions of the succeeding sections.

Courts may  
sentence.  
Ibid.

Directors to be  
notified and  
assent.  
Ibid.

3. Any justice or judge of either of the said courts respectively, on the application of the mayor, or of any alderman of the city of Boston, or of any director of the house of industry, or house of reformation, or of any overseer of the poor of said city, shall have power to sentence to said house of employment and reformation all children who live an idle or dissolute life, whose parents are dead, or, if living, from drunkenness or other vices neglect to provide any suitable employment, or exercise any salutary control over said children. And the persons thus committed shall be kept, governed, and disposed of as hereinafter provided, the males till they are of the age of twenty-one years, and the females of eighteen years.<sup>3</sup>

Children  
leading an idle  
or dissolute  
life, &c., may  
be sentenced  
to house of  
reformation.  
Ibid. § 3.

To be kept, &c.,  
till of age.  
Ibid.  
See § 9.

<sup>1</sup> The act here cited, that is, Stat. 1787, c. 54, was repealed by Stat. 1834, c. 151, § 22, and the latter statute was itself repealed by the Revised Statutes. Most of the provisions of the former in relation to the punishment of the class of offences named therein, were incorporated into Rev. Stats. c. 143, § 5, and subsequently into the General Statutes, passed 1859. See ante, *Houses of Correction and Jails*, p. 345, § 27.

<sup>2</sup> Now the superior court for the transaction of criminal business.

<sup>3</sup> All of this section, except the last sentence, was substantially re-enacted by Stat. 1847, c. 208, § 1. See post. p. 379, § 9.

Directors to  
employ and  
instruct  
children.  
1825, 182, § 4.

Shall have  
power to  
bind out.  
Ibid.

1793, 59, §§ 4,  
5, 6.

To have pow-  
ers, &c., of the  
overseers of  
the poor.  
1825, 182, § 4.

Court may dis-  
charge, on  
recommenda-  
tion of direc-  
tors.  
Ibid. § 5.

4. The directors of said house of industry, or such other persons as said city council shall appoint directors of the institution, authorized by the first section, may receive the persons sentenced and committed as aforesaid into said institution; and they shall have power to place the persons committed to their care—the males until they arrive at the age of twenty-one years, and the females until they arrive at the age of eighteen years—at such employments, and to cause them to be instructed in such branches of useful knowledge as shall be suitable to their years and capacity; and they shall have power to bind out said minors as apprentices or servants, until they arrive at the ages aforesaid, to such persons, and at such places, to learn such arts, trades, and employments, as in their judgment will be most for the reformation, amendment, and future benefit and advantage of such minors. And the provisions of an act entitled “An act providing for the relief and support, employment and removal of the poor, and for repealing all former laws made for these purposes,” passed the twenty-sixth day of February, in the year of our Lord one thousand seven hundred and ninety-four, contained in the fourth, fifth, and sixth sections thereof, so far as they relate to binding out children as servants or apprentices, are adopted as a part hereof; and the said directors shall have all the powers, and be subject to all the duties, of the overseers of the poor, as set forth in the sections aforesaid of the act aforesaid; and the master or mistress, servant and apprentice, bound out as aforesaid, shall have all the rights and privileges, and be subject to all the duties, set forth in the sections aforesaid of the act aforesaid.<sup>1</sup>

5. Whenever said directors, overseers, or managers shall deem it expedient to discharge any minor committed to their charge as aforesaid, and not bound out as a servant or apprentice, and shall recommend the same in writing to the court by whom such minor was committed, said court shall have power to discharge him or her from the imprisonment or custody aforesaid.

<sup>1</sup> The sections of the act referred to, (Stat. 1793, c. 59,) were repealed by the Rev. Stats. c. 180, and these were repealed by the Gen. Stats. c. 111. For the authority of overseers of the poor to bind out children, &c., see *Overseers of the Poor* and *Paupers*, post.

6. The said judge or either of the said justices, on the application of either of the persons mentioned in the third section, shall have power to order the transfer of any child committed to the common jail, or the house of correction, and inmates of the same, on March 4, 1826, to the said house for the employment and reformation of juvenile offenders, to be received, kept, or bound out by the directors thereof, in conformity with the foregoing provisions.

Children already committed to house of correction may be transferred to house for juvenile offenders. 1825, 182, § 6.

7. The city of Boston is authorized to establish, in any building or buildings, or part of any building used by said city as a house of industry, or for any other purpose, a separate branch or branches of said house of reformation and employment for females, or for the separate classification of such females.

Separate branch for females may be established. 1843, 22, § 1.

8. Any party aggrieved by the sentence of the police court, or any justice thereof, passed pursuant to the second section, may appeal from such sentence to the next municipal court<sup>1</sup> in the said city, whose judgment shall be final, as in other cases of appeals from the judgment of justices of the peace to the courts of common pleas in criminal cases, the party appealing recognizing with sufficient surety or sureties, to the satisfaction of the justices of the police court, by whom the sentence is passed, to enter and prosecute such appeal, and in the mean time to keep the peace, and be of good behavior.

Appeal from judgment of the police court, under the second section, to the municipal court. 1820, c. 18.

9. The municipal<sup>1</sup> or police court of said city, upon the complaint, under oath, of the mayor or any alderman thereof, or of any of the directors of the house of industry or of the said house of reformation and employment, or of the overseers of the poor of said city, that any minor, under the age of sixteen years, lives an idle and dissolute life, and that his parents are dead, or, if living do from vice or any other cause, neglect to provide suitable employment for, or to exercise salutary control over, such minor, shall have power, upon conviction thereof, to sentence such minor to such house of reformation and employment, to be kept and governed according to law.<sup>2</sup>

Children leading an idle or dissolute life, &c., may be sentenced to house of reformation. 1847, 208, § 1.

<sup>1</sup> Now the superior court for the transaction of criminal business.

<sup>2</sup> The second section of the Act of 1843, c. 22, which was repealed by the

Right of appeal  
saved.  
1847, 208, § 2.  
1843, 22, § 3.

10. Nothing in the preceding sections is to be construed to take away the right of appeal from the police court to the municipal court.<sup>1</sup>

#### ORDINANCE.<sup>2</sup>

Directors of  
house of indus-  
try appointed  
directors of  
house of  
reformation.  
House of  
reformation  
united with  
Boylston  
Asylum.  
June 28, 1841.

SECTION 1. The directors of the house of industry are hereby appointed directors of the house of reformation, with authority to take such steps as may be necessary to unite the same with the Boylston Asylum, now under their charge, and henceforward to use the building for the new institution, which shall be called the Boylston School and House of Reformation,<sup>3</sup> but shall be a part of the house of industry, and which is hereby declared to be also the institution for the reception, instruction, employment, and reformation of juvenile offenders, under the act passed March 4, 1826.

Rights and

SECT. 2. The said directors shall have all the rights and

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Act of 1847, c. 208, § 2, was identical with § 9 in the text, excepting that it was not restricted, as in the text to minors "under the age of sixteen years."

<sup>1</sup> Now the superior court for the transaction of criminal business.

<sup>2</sup> Orders relating to the house of reformation, passed June 28, 1841, and an ordinance passed June 5, 1861.

<sup>3</sup> The house of reformation was originally established in 1826, in a portion of the building in South Boston then occupied as a house of correction. In 1836 a separate building was erected not far from the house of correction for the inmates, where they remained until July 1, 1858, when they were transferred to Deer Island, excepting those who were supported from the Boylston Fund, and who were under the management of the overseers of the poor in accordance with the Act of 1802, c. 44, by which act the said overseers, with others, were incorporated as a body politic to hold and dispose of "the bequests, devises, and donations made and granted by John Boylston." See *Overseers of the Poor*, post. The house of reformation was under the care of the directors of the house of industry until 1833, when a separate board was chosen. In 1841 a committee was appointed, of which Mr. Chapman, the mayor was chairman, "with instructions to consider the whole subject of the house of reformation, and whether any change is expedient in the law establishing said institution, and to report by ordinance or otherwise." This committee reported among other things, that it was expedient to place this institution under the charge of the directors of the house of industry; and they reported two orders to that effect, which were adopted June 28, 1841, as above. See *City Documents* of 1841, Nos. 6 and 14. See also *City Records*, vol. iv. pp. 24, 46, 52, 112 (b), 148, 149, 200, 223, 333; vol. x. pp. 145, 147, 480; vol. xi. pp. 127, 149, 250, 324; vol. xii. p. 283; vol. xix. p. 167.

powers of the directors of the house of reformation, as to all powers of  
 children who have been heretofore indented from the said house, directors.  
 and as to protecting their rights and superintending the welfare June 28, 1841.  
 of said children, and enforcing the provisions of said indentures.

SECT. 3. Agreeably to section one, chapter twenty-two of A branch for  
 the Acts of eighteen hundred and forty-three,<sup>1</sup> a separate branch females  
 of the house of reformation for females is hereby established in established.  
 the building at Deer Island now used as a house of industry and June 5, 1861.  
 for other purposes, and the board of directors for public institu-  
 tions are hereby authorized and empowered to provide accom-  
 modations for and to make all needful and proper regulations  
 concerning the same, subject to the approval of the city council.<sup>2</sup>

## INTELLIGENCE OFFICES.

### STATUTES.

1. No person shall establish or keep an intelligence office, without a license, under a penalty.
2. Board of aldermen may grant and revoke licenses for establishing and keeping intelligence offices.

2. Hours during which offices may be kept open.
3. Signs to be put up.
4. Records to be kept. Open to inspection of mayor, aldermen, &c.
5. Fees receivable. When to be refunded.
6. License may be revoked.

### RULES AND REGULATIONS.

1. Application for license, how made.

### STATUTES.

1. Whoever, without a license therefor, establishes or keeps an intelligence office for the purpose of obtaining or giving Intelligence office, penalty for keeping

<sup>1</sup> See the Act, *ante*, p. 379, § 7.

<sup>2</sup> An ordinance passed May 9, 1860, providing for a branch for girls in the house of reformation, was repealed June 5, 1861.

By the Acts of 1850, c. 294; 1852, c. 283; 1853, c. 343; and 1854, c. 88, the justices of the police court in Boston were authorized to send truant children to the house of reformation; and the like authority is given in the Gen. Stats. c. 42, §§ 4-8. See *Truants*, post.

without license, information concerning places of employment for domestics, servants, or other laborers, except seamen, or for the purpose of procuring or giving information concerning such persons for or to employers, shall pay a fine of ten dollars for each day such office is so kept.

Aldermen, &c.,  
may license, &c  
Ibid. § 24.

2. The mayor and aldermen or selectmen of any city or town may, for the purposes mentioned in the preceding section, grant licenses to suitable persons for the term of one year, and may revoke the same at pleasure. They shall receive one dollar for each license so granted.

#### RULES AND REGULATIONS.<sup>1</sup>

Applications  
for license,  
how made.  
Aug. 3, 1863.

SECTION 1. All persons making applications for licenses shall state in their petitions the place which they propose to occupy; and no person licensed shall occupy any other place, without leave first obtained of the board of aldermen.

Hours offices  
may be kept  
open.  
Ibid.

SECT. 2. The intelligence offices may be kept open for business between the hours of eight o'clock in the morning and eight o'clock in the evening, Sundays excepted, and at no other hours.

Signs to be  
put up.  
Ibid.

SECT. 3. All persons, licensed as aforesaid, shall place in some conspicuous place on the premises occupied by them, a sign, with their names and the word "licensed" thereon; and shall produce their license on the demand of any person doing business with them.

Records to  
be kept.  
Ibid.

SECT. 4. They shall keep a book, in which shall be entered, at the time of application, the name and residence of any person who may apply for employment, and the name and residence of any person who may make application to be supplied with male or female domestics, servants, clerks, or other laborers, and also any and all sums of money which may be received of any persons for such services; and such books shall at all times be open to the inspection of the mayor or either of the aldermen, or by any person by them authorized.

Fees.

SECT. 5. Every licensed keeper of an intelligence office shall

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<sup>1</sup> Rules and regulations passed by board of aldermen, August 3, 1863.

be entitled to receive of each female, at the time of application Aug. 3, 1863. for a place, a sum not exceeding twenty-five cents, and of each male who shall make such application a sum not exceeding fifty cents; and of each person making application for female servants a sum not exceeding twenty-five cents, and for a male servant a sum not exceeding fifty cents, for which a receipt shall be given at the time; and in case no servant, or place of employment, is obtained within six days from the date of payment, the money When to be refunded. Ibid. shall be refunded, except as follows: If either a male or female shall be sent to a situation, and make an engagement, and go to work, and for any reason shall not remain at the place, neither party shall be entitled to have the pay returned.

SECT. 6. Any person licensed to keep an intelligence office, License may be revoked. who shall violate any of the provisions of the preceding sections, or any other rules and regulations that may be hereafter passed by the board of aldermen, shall be liable to have his license revoked; *provided, however*, that any license may at any time be revoked for any cause other than those above specified.

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## JURIES.

## STATUTES.

## QUALIFICATION AND EXEMPTION.

1. Qualification of jurors.
2. Persons absolutely exempt.
3. To serve but once in three years.
4. Jurors before justice of peace and police courts, when exempt, &c.

## JURY LIST AND BOX.

5. Selectmen to prepare lists of persons qualified.
6. List to be posted up and approved or altered by town.
7. Names to be put into a box.
8. Name of person convicted, &c., to be withdrawn.

## VENIRES FOR JURORS.

9. Clerks to issue writs of *venire facias*.
10. Jurors to be apportioned.
11. *Venires*, how served.

## DRAWING AND SUMMONING JURORS.

12. Jurors selected by drawing names.
13. Names, when and how to be drawn.
14. Date of each draft to be indorsed on ballot.
15. May be drawn in town meeting.
16. Meetings for drawing jurors, when held.
17. Summoning jurors and returning *venire*.

## SPECIAL PROVISIONS FOR CITIES.

18. Lists, how made, &c., in cities.
19. Drawing juries, &c., in cities.
20. When interest not to disqualify.

## GRAND JURIES.

21. Grand jury in Suffolk, when drawn, &c.
22. How drawn, summoned, &c.
23. Deficiency in grand jury.

## PENALTIES, ETC.

24. Fines on jurors neglecting to attend.

25. Fines on officers and others for neglect.
26. Same, in cases of highways, mills, &c.
27. Punishment for fraud in drawing jurors.
28. Special juries not affected by this chapter.
29. Warrant for jury, &c., in cases of highways.
30. Jury, how and whence summoned.

## QUALIFICATION AND EXEMPTION.

Qualifications  
of jurors.  
G. S. 132, § 1.  
9 Mass. 107.

Persons abso-  
lutely exempt,  
G. S. 132, § 2.  
19 Pick. 368.

1. All persons who are qualified to vote in the choice of representatives in the general court shall be liable to be drawn and serve as jurors, except as is hereinafter provided.

2. The following persons shall be exempt from serving as jurors, to wit:—

The governor, lieutenant-governor, members of the council, secretary of the commonwealth, members and officers of the senate and house of representatives during the session of the general court, judges and justices of any court, (except justices of the peace,) county and special commissioners, clerks of courts, registers of probate and insolvency, registers of deeds, sheriffs and their deputies, coroners, constables, marshals of the United States and their deputies, and all other officers of the United States, counsellors and attorneys at law, settled ministers of the gospel, officers of colleges, preceptors and teachers of incorporated academies, practising physicians and surgeons regular licensed, cashiers of incorporated banks, constant ferry-men, persons who are more than sixty-five years old, members of the volunteer militia, members of the ancient and honorable artillery company, and enginemen and members of the fire department of the city of Boston; and enginemen and members of the fire department of other places may be exempt by the vote of the city council of the city or the inhabitants of the town.

To serve but

3. No person shall be liable to be drawn and serve as a

juror in any court oftener than once in three years, except as provided in the two following sections, but he shall not be so exempt unless he actually attends and serves as a juror in pursuance of the draft.

once in three years.  
G. S. 132, § 3.  
16 Mass. 220.  
8 Pick, 504.

4. No person shall be exempt from serving on a jury in any other court, in consequence of his having served before a justice of the peace or police court. No person shall be compelled to serve as a juror before any justice of the peace, or police court, more than twenty-four days in any one year, nor more than fourteen days at any one time, except to finish a case commenced within that time.

Jurors before justices of peace and police courts, when exempt, &c.  
G. S. 132, § 5.

JURY LIST AND BOX.

5. The selectmen of each town shall once in every year prepare a list of such inhabitants of the town not absolutely exempt, as they think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all legal exceptions; which list shall include not less than one for every one hundred inhabitants of the town, and not more than one for every sixty inhabitants, computing by the then last census, except that in the county of Dukes County it may include one for every thirty inhabitants.

Selectmen to prepare lists of persons qualified.  
Ibid. § 6.  
7 Met. 326.

6. The list when so prepared shall be posted up by the selectmen in public places in the town, ten days at least before it is submitted for revision and acceptance, and shall then be laid before the town; and the town may alter it by adding the names of any persons liable to serve, or striking any names therefrom.

List to be posted up and approved or altered by town.  
G. S. 132, § 7.  
7 Met. 326.

7. The selectmen shall cause the names borne on the list to be written, each on a separate paper or ballot, and shall roll up or fold the ballots so as to resemble each other as much as possible, and so that the name written thereon shall not be visible on the outside; and they shall place the ballots in a box to be kept by the town clerk for that purpose.

Names to be put into a box.  
G. S. 132, § 8.

8. If any person whose name is so placed in the jury box is convicted of any scandalous crime, or is guilty of any gross

Name of person convicted of any scandalous

crime, &c., to  
be withdrawn,  
&c.  
G. S. 132, § 9.

immorality, his name shall be withdrawn therefrom by the selectmen, and he shall not be returned to serve as a juror.

#### VENIRES FOR JURORS.

Clerks to issue  
writs of *venire  
facias*.  
Ibid. § 10.  
See §§ 21, 22.

9. The clerks of the supreme judicial and superior courts, in due season before each term, (except the terms of the superior court in the county of Suffolk for criminal business commencing at other times than in January, April, July, and October,) and at such other times as the respective courts may order, shall issue writs of *venire facias* for jurors, and shall therein require the attendance of the jurors on such day of the term as the court may order. The jurors returned for the superior court for criminal business in the county of Suffolk shall serve three terms.

Jurors to be  
apportioned.  
G. S. 132, § 11.

10. The clerks in issuing the *venires* shall require from each town and city a number of jurors as nearly as may be in proportion to their respective number of inhabitants so as to equalize as far as possible the duty of serving as jurors.

*Venires*, how  
served.  
Ibid. § 12.

11. The *venires* shall be delivered to the sheriff of the county, and by him transmitted to a constable in each of the towns and cities to which they are respectively issued, and they shall be served by the constable, without delay, on the selectmen and town clerk.

Additional  
*venires* may be  
issued in term  
time.  
Ibid. § 13.

12. Nothing contained in the preceding sections shall prevent any court from issuing *venires* for additional jurors in term time whenever it is necessary for the convenient dispatch of their business; in which case the *venires* shall be served and returned and the jurors required to attend, on such days as the court shall direct.

#### DRAWING AND SUMMONING JURORS.

Jurors selected  
by drawing  
names.  
Ibid. § 15.

13. All jurors, whether required to serve on a grand or traverse jury, by force of the laws relating to highways or mills, or on any other occasion, (except inquests and proceedings relating to the commitment of insane persons,) shall be selected by drawing ballots from the jury box, and the persons whose

names are borne on the ballots so drawn shall be returned to G. S. 132, § 15. serve as jurors.

14. When jurors are to be so drawn, the town clerk and selectmen shall attend at the clerk's office or some other public place appointed for the purpose, and if the clerk is absent, the selectmen may proceed without him. The ballots in the jury box shall be shaken and mixed together, and one of the selectmen without seeing the names written thereon shall openly draw therefrom a number of ballots equal to the number of jurors required. If a person so drawn is exempt by law, or is unable by reason of sickness or absence from home to attend as a juror, or if he has served as a juror in any court within three years then next preceding, his name shall be returned into the box and another drawn in his stead.

Names, when and how to be drawn.  
Ibid. § 16.

15. When a person is drawn and returned to serve as a juror in any court, the selectmen shall indorse on the ballot the date of the draft and return it into the box, and whenever there is a revision and renewal of the ballots in the box, the selectmen shall transfer to the new ballots the date of all the drafts made within three years then next preceding.

Date of each draft to be indorsed on ballot.  
Ibid. § 17.

16. The meeting for drawing jurors, whether the draft is made in town meeting or before the selectmen and town clerk only, shall be held not less than seven nor more than twenty-one days before the day when the jurors are required to attend.

Meetings for drawing jurors, when held.  
Ibid. § 19.

17. The constable shall, four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the *venire* with the indorsement thereon of his having been drawn, or by leaving at his place of abode a written notification of his having been drawn and of the time and place of the sitting of the court at which he is to attend, and shall make a return of the *venire* with his doings thereon to the clerk, before the opening of the court from which it was issued.

Summoning jurors and returning *venire*.  
Ibid. § 20.  
13 Met. 325.

## SPECIAL PROVISIONS FOR CITIES.

Lists, how  
made, &c.,  
in cities.  
G. S. 132, § 21.

18. The list of jurors in cities shall be prepared and posted therein by the mayor and aldermen in like manner as required of selectmen, and when posted for ten days shall be submitted to the common council, which shall have like power as towns to revise and accept the same.

Drawing ju-  
rors, &c., in  
cities.  
Ibid. § 22.

19. The mayor and aldermen and the clerks of each city shall severally have and exercise all the powers and duties with regard to drawing and all other matters relating to jurors therein, which are in this chapter required to be performed by the selectmen and town clerks in their respective towns, and all *venires* for jurors to be returned from cities shall be served on the mayor and aldermen.

When interest  
not to dis-  
qualify.  
Ibid. § 30.  
5 Mass. 90.  
9 Met. 576.  
1 Gray, 472.  
See G. S. c. 122,  
§ 13.

20. In indictments and penal actions for the recovery of any sum of money or other thing forfeited, it shall not be a cause of challenge to a juror that he is liable to pay taxes in any county, city, or town which may be benefited by such recovery.

GRAND JURIES.<sup>1</sup>

Grand jurors  
in Suffolk,  
when drawn,  
&c.  
G. S. 171, § 2.

21. The clerk of the superior court for criminal business, not less than seven nor more than fourteen days before each term commencing on the first Mondays of January and July, shall issue writs of *venire facias* for twenty-three grand jurors to serve in said court, twenty-two of whom shall be drawn and returned from the city of Boston, and one from Chelsea, North Chelsea, or Winthrop, who shall be held to serve for each term thereof for six months and until another grand jury is empanelled in their stead.

How drawn,  
summoned, &c.  
Ibid. § 3.

22. Grand jurors shall be drawn, summoned, and returned in the same manner as jurors for trials; and when drawn at the same time with jurors for trials, the persons whose names are

<sup>1</sup> The Act of 1860, c. 143, provided that Gen. Stats. c. 171, § 1, should not apply to the county of Suffolk, and that § 2, (in the text, § 21,) of the same chapter should apply exclusively to said county.

first drawn, to the number required, shall be returned as grand jurors, and those afterwards drawn shall be jurors for trials. G. S. 171, § 3.

23. In case of deficiency of grand jurors in any court, writs of *venire facias* may be issued to the constables of such cities or towns as the court may direct, to return forthwith such further number of grand jurors as may be required. Deficiency in grand jury. Ibid. § 4.

## PENALTIES, ETC.

24. If a person duly drawn and summoned to attend as a juror in any court neglects to attend without sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury. Fines on jurors neglecting to attend. G. S. 132, § 36.

25. When, by neglect of any of the duties required in this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned from any place are not duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the same court to the use of the county in which the offence is committed. Fines on officers and others for neglect. Ibid. § 37.

26. If such neglect occurs with regard to jurors required to serve on any other occasion than in the supreme judicial court, the superior court, or before any justice of the peace or police court, the sheriff or other officer before whom the jurors were required to appear shall make known the fact to the superior court, next to be held in the same county, and the court, after due examination and a hearing of the parties who are charged, shall impose the fine. Same, in cases of highways, mills, &c. Ibid. § 38.

27. If any city or town clerk, selectmen, mayor, or alderman is guilty of fraud, either by practising on the jury box previously to a draft, or in drawing a juror, or in returning into the box the name of any juror which had been lawfully drawn out and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall be punished by a fine not exceeding five hundred dollars. Punishment for fraud in drawing jurors. Ibid. § 39.

28. Nothing contained in the foregoing sections shall affect Special juries

not affected.  
G. S. 132, § 40.

Warrant for  
jury, &c., in  
cases of  
highways, &c.  
G. S. 43, § 27;  
44, §§ 19, 20.  
11 Pick. 269.  
3 Cush. 59.  
4 Cush. 291.

Jury, how and  
when summon-  
ed.  
G. S. 43, § 28;  
44, §§ 19, 20.  
13 Met. 316.  
4 Cush. 291.

the power and duty of coroners or magistrates to summon and empanel jurors when authorized by other provisions of law.

29. It is provided by the General Statutes that juries for the assessment of damages in the laying out, altering, &c., of highways shall be summoned by a warrant directed to the sheriff of the county or his deputy, who is disinterested, or to a coroner, as the commissioners shall order, requiring him to summon a jury of twelve men to hear and determine the matter of complaint set forth in the petition, and to decide all such matters as shall legally come before them on the hearing.

30. The officer who receives the warrant shall, in writing, require of the selectmen of the three nearest towns not interested in the question, if there be so many in the county, to return a number of jurors, not less than two nor more than six from any one town, unless in case of necessity; and the jurors shall be drawn, summoned, and returned as in other cases, except that the jurors need not be summoned more than twenty-four hours before the time appointed for their attendance.<sup>1</sup>

## LAMPS.

### STATUTES.

- |   |  |
|---|--|
| 1. Board of aldermen empowered to set up lamps, and make rules respecting the same. | 2. Penalties for wilfully breaking or injuring the same, &c. |
|   | 3. Penalty for the same under the General Statutes.          |

### STATUTES.

Board of aldermen empowered to set up lamps, and make rules respecting the same.  
1825, 3, § 1.

1. It shall be lawful for the mayor and aldermen of the city of Boston for the time being, to cause to be set up and affixed such and so many lamps in the streets and other places in the said city, for the purpose of lighting the same, as they may determine to be convenient and necessary. And the said

<sup>1</sup>For statutes relating to special juries, see Gen. Stats. c. 64, § 4; c. 73, §§ 11, 12; c. 74, § 5; c. 87, § 2; c. 88, § 36; c. 120, §§ 17, 18; c. 149, § 13.

mayor and aldermen are empowered to make all necessary con- See p. 14, *ante*.  
tracts, rules, orders, and regulations respecting the said lamps,  
and the lighting and keeping the same in repair, and the regu-  
lation and preservation of the same, as they may deem most for  
the benefit of said city.

2. Whoever shall wilfully, maliciously, carelessly, or wan- Penalties for  
tonly break, throw down, extinguish, or otherwise injure any of wilfully break-  
the said lamps, or the posts, irons, or other furniture to the ing or injuring  
same belonging, shall, upon conviction thereof, forfeit and pay the same, &c.  
a sum not less than ten dollars nor more than thirty dollars for 1825, 3, § 2.  
each lamp so broken or damaged, and the like sum for each  
post or the iron or other furniture so broken or damaged, and  
costs of prosecution; which fines and forfeitures shall inure the  
one moiety thereof to the use of the commonwealth, and the  
other moiety to the use of the person who shall prosecute for  
the same.<sup>1</sup>

3. Whoever wilfully or maliciously extinguishes any lamp, Penalty for the  
or breaks, destroys, or removes any lamp, or any lamp-post, or same, under  
railing or posts, erected on any bridge, sidewalk, street, high- the General  
way, court, or passage, shall be punished by imprisonment in Statutes.  
the jail not exceeding six months, or by fine not exceeding fifty G. S. 161, § 3.  
dollars.

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## LEATHER.

### STATUTES.

- |   |  |
|---|--|
| 1. Deputy inspectors of sole leather to be appointed, and to give bond.<br>2. Measurers of upper leather to be appointed by mayor and aldermen. | 3. To attend to measuring and sealing upper leather.<br>4. Fees of measurer and how paid.<br>5. Penalty for counterfeiting, &c., measurer's marks. |
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<sup>1</sup> The Stat. of 1825, c. 3, provided for the same penalties mentioned in Stat. 1823, c. 113, to be recovered and appropriated in the same manner. The statute last mentioned was repealed by the Revised Statutes. The third section of Stat. 1825, c. 3, repealed an old act passed June 29, 1773; see *Special Laws*, vol. iii., *Appendix*, p. 27.

## STATUTES.

Inspector-general shall appoint deputy-inspectors, &c.  
G. S. 49, §§ 103, 104.

1. The inspector-general of leather shall appoint one or more deputy inspectors in any place upon the application of the mayor and aldermen or selectmen, shall be answerable for their doings, and shall take a bond with sufficient sureties from each of them, to himself and his successors in office, in a penal sum not exceeding three hundred dollars.

Appointment of measurers of upper leather.  
Ibid. § 112.

2. The mayor and aldermen or selectmen of any place, when thereto requested by two or more citizens thereof, shall annually, in April, appoint one or more persons as measurers of upper leather, who shall be sworn.

Duty of measurers.  
Ibid. § 113.

3. Each measurer shall furnish himself with proper racks or measures, and suitable seals; shall, when requested, go to any place within the city or town for which he is appointed measurer, and there ascertain the number of square feet in each side of upper leather made of the hides of neat cattle, buffalo, or other animal, usually heretofore sold by measure, except such as shall have been previously measured and sealed by a measurer of some place in this state, or by some person lawfully appointed for that purpose in another of the United States; and shall seal the same, impressing thereon his name and the name of the place for which he is a measurer, at full length, and the measure thereof in square feet, as low as a quarter.

Fees.  
Ibid. § 114.

4. Every measurer shall be paid for measuring and sealing each side of upper leather the sum of one cent, which shall be paid by the person who requests him to measure and seal the same.

Penalty for counterfeiting marks, &c.  
Ibid. § 115.

5. Whoever counterfeits, wilfully alters, or defaces, such marks on any side of upper leather so measured, shall for each offence forfeit the sum of twenty-five dollars.<sup>1</sup>

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<sup>1</sup> For general provisions relating to the inspection, &c., of leather, see Gen. Stats. c. 49, §§ 103-117.

## LIBRARY.

## STATUTES.

1. Cities, &c., may establish public libraries.
2. May make appropriations, and receive bequests and donations.
3. City of Boston authorized to found and maintain a public library. Proviso.

## ORDINANCE.

1. Trustees, how and when chosen; tenure of office; vacancies.
2. Organization of board of trustees; may make rules and regulations.
3. Trustees to have care, &c., of the public library; control ex-

penditures; make rules, &c., for the regulation of the library.

4. Trustees shall report annually to the city council.
5. Trustees shall nominate superintendent and librarian; if elected, their tenure of office and compensation; trustees may appoint assistants, &c.
6. Committee to examine library to be appointed.
7. How moneys shall be paid.
8. Repairs on library, how made.
9. Donations received, how acknowledged.
10. Regulations relating to the use of the books.
11. Repeal of former ordinances.

## HISTORY OF THE PUBLIC LIBRARY.

The subject of a free library had been under consideration by many prominent citizens and by the city government for some years, and committees had been appointed and offers of contributions of books had been made by individuals, but nothing definite was done until August fifth, eighteen hundred and fifty, when the Hon. John P. Bigelow, then mayor of the city, contributed the sum of one thousand dollars for the purpose of establishing a public library. This donation, being the first money that was given for the object, was received and funded by the city council; and the committee of the city council on the library were directed "to proceed with as little delay as possible to carry into effect the establishment of a free public library."

History of the  
Public Library.

Joshua Bates, Esq., of London, whose early life was passed in Boston, having offered to this city the munificent sum of fifty thousand dollars towards the purchase of books for the public library of the city, if the city would erect a suitable building for that purpose, — on the twenty-fourth of February, eighteen

History of the  
Public Library.

hundred and fifty-three, an order was passed by the city council, authorizing the committee on the library, in conference with the board of trustees, to purchase a suitable site for the erection of a building which should be adapted to the purposes of a library, including Mr. Bates's donation. Accordingly, said committee purchased twenty-three thousand three hundred and eighty-four feet of land on Boylston Street, opposite the Common, upon which the present elegant and commodious edifice was erected, at a cost to the city, for land and building, amounting to about three hundred and sixty-five thousand dollars.

The building was finished and delivered into the custody of the city council, and by the city council was transferred to the care of the trustees of the public library, with appropriate ceremonies, on January first, eighteen hundred and fifty-eight.

Besides the above-mentioned donations in money, the sum of ten thousand dollars was subsequently given by Hon. Jonathan Phillips, who, by will, bequeathed an additional sum of twenty thousand. Ten thousand dollars was bequeathed by the late Hon. Abbott Lawrence, four thousand dollars was given by the executors of the late Miss Mary P. Townsend, of Boston, and one thousand dollars by Thomas Minns and others, trustees of the Franklin Club. All of these sums have been funded by the city council, and the annual proceeds are expended for the purchase of books of permanent value.

The sum of one thousand dollars was given by the late Samuel Appleton, Esq., and the same amount by Mrs. Sally I. K. Shepard, for the purpose of procuring books for the immediate use of the public.

A very valuable collection of congressional and state documents were early presented by the Hon. Edward Everett, and a choice collection of works on general literature has been presented by Hon. George Ticknor, and the large and excellent libraries of the Hon. Nathaniel Bowditch and the Rev. Theodore Parker have been given. Many other smaller, though valuable donations, have been made by others.

The library is open every day, with the exception of Sundays and the legal holidays, for the delivery of books for home use,

and the reading rooms connected therewith are open at such hours as the trustees from time to time determine, both which privileges are enjoyed freely by all of suitable age who conform to the regulations of the trustees.

History of the  
Public Library.

## STATUTES.

1. Each town and city may establish and maintain a public library therein, with or without branches, for the use of the inhabitants thereof, and provide suitable rooms therefor, under such regulations for its government as may from time to time be prescribed by the inhabitants of the town, or the city council.

Towns and  
cities may es-  
tablish libra-  
ries.  
G. S. 33, § 8.

2. Any town or city may appropriate money for suitable buildings or rooms, and for the foundation of such library a sum not exceeding one dollar for each of its ratable polls in the year next preceding that in which such appropriation is made; may also appropriate annually, for the maintenance and increase thereof, a sum not exceeding fifty cents for each of its ratable polls in the year next preceding that in which such appropriation is made, and may receive, hold, and manage any devise, bequest, or donation for the establishment, increase, or maintenance of a public library within the same.

May appropri-  
ate money and  
receive devises,  
&c., for that  
purpose  
Ibid. § 9.

3. The city of Boston is hereby authorized to found and maintain a public library, and to make such expenditures, establish such regulations, fix such penalties for the breach thereof, and do all such acts, and things as may be deemed necessary or proper to that end; and the powers hereinbefore named, may be exercised by the city council of the said city, in any manner which they may prescribe, and by the agency of any persons to whom they may delegate the same; *provided, however*, that the expenditures hereinbefore mentioned shall not exceed the sum of one hundred and fifty thousand dollars, within four years from the first day of January, in the year eighteen hundred and fifty-three; nor the sum of ten thousand dollars in any one year after that time.<sup>1</sup>

City of Boston  
authorized to  
found and  
maintain a  
public library.  
1853, c. 38.

Proviso.  
Ibid.

<sup>1</sup> The second section of the Act of 1853, c. 38, repealed c. 52 of 1848; and the third section of the Act provided that it should take effect from and after

ORDINANCE.<sup>1</sup>

Trustees, how  
and when  
chosen; tenure  
of office.  
Oct. 20, 1863.

SECTION 1. There shall be chosen annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, one member of the board of aldermen, one member of the common council, and five citizens at large, to constitute a board of trustees for the public library, who shall hold their offices until others are chosen in their places; and any vacancy in said board shall be filled immediately as aforesaid.

Vacancies.

Organization of  
board of trustees;  
may make  
rules, &c.  
Ibid.

SECT. 2. The persons so chosen shall meet and organize themselves into a board, by the choice of one of their number as president; and they may make such rules and regulations for their own government, and in relation to the officers appointed as hereinafter provided, as they may deem expedient, and which shall not be inconsistent with the provisions of this ordinance.<sup>2</sup>

Trustees to  
have care, &c.,  
of library, &c.  
Ibid.  
May make rules,  
&c., for regulation  
of same.  
Ibid.

SECT. 3. The said trustees shall have the general care and control of the public library, together with the interior of the building, its fixtures, furniture, and of the expenditure of all moneys appropriated therefor; and they may make such rules and regulations in relation to the same, and fix and enforce such penalties for their violation as they may deem expedient and proper, subject at all times to such limitations, restrictions, and amendments as the city council may direct.<sup>2</sup>

Trustees shall  
make an annual  
report to the  
city council.  
Ibid.

SECT. 4. The said trustees shall annually present to the city council a report containing a statement of the condition of the library, the number of books that have been added during the past year, with an account of all the receipts and expenditures, together with such information or suggestions as they may deem important; and they shall at the same time transmit to the city council the annual report of the committee for the examination of the library, hereinafter mentioned.

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its acceptance by the city council of the city of Boston. It was accepted by the city council April 14, 1853.

<sup>1</sup> An ordinance in relation to the public library, passed October 20, 1863.

<sup>2</sup> See *Rules and Regulations* in the *Supplement*.

SECT. 5. The said trustees shall annually, as soon as may be after the organization of the board, and whenever any vacancy exists, nominate to the city council suitable persons, who shall be citizens of Boston and resident thereof so much of the year as the trustees direct, for superintendent and librarian of the city library; and if confirmed, any person so nominated shall hold his office for one year from the time of said appointment, and until some other person shall be appointed in his place; and said superintendent and librarian shall receive such compensation for their services as shall be determined by the city council, who, whenever they see cause, may remove them from office. And said board may appoint such assistants and subordinate officers as they may think necessary or expedient, and may remove the same, and shall fix their compensation; *provided*, the amount thus paid shall not exceed in the whole the sum appropriated by the city council for that item of expense; and *provided, also*, that the city council, whenever they shall see cause, may remove any of the persons so appointed.

Trustees shall  
nominate su-  
perintendent  
and librarian.  
Oct. 20, 1863.

Tenure of office  
and compensa-  
tion.  
Ibid.

Trustees may  
appoint assist-  
ants.  
Ibid.

SECT. 6. The trustees shall annually appoint a committee of five citizens at large, who, together with a trustee as chairman, shall examine the library, and make report of its condition to the trustees.

Committee to  
examine li-  
brary.  
Ibid.

SECT. 7. No payment of money shall be made on account of the library, except by order of the board, and in pursuance of a warrant signed by the president.

How money  
shall be paid.  
Ibid.

SECT. 8. Whenever there shall be occasion for repair or alteration in any part of the building of the library, the superintendent shall cause the same to be reported to the committee of the city council on public buildings.

Repairs on  
library, how  
made.  
Ibid.

SECT. 9. A letter of acknowledgment signed by the president, and countersigned by the librarian, shall be promptly returned to every person making a donation to the library.

Donations re-  
ceived, how  
acknowledged.  
Ibid.

SECT. 10. In prescribing the regulations relative to the care and use of the books, it shall be the duty of the trustees to adopt such measures as shall extend the benefits of the institution as widely as possible among the citizens and residents of Boston.

Regulations re-  
lating to the  
use, &c., of  
books.  
Ibid.

Repeal of former ordinances.  
Oct. 20, 1863.

SECT. 11. An ordinance in relation to the public library, passed October fourteen, eighteen hundred and fifty-two, and an ordinance in addition to the same, passed July two, eighteen hundred and fifty-seven, are hereby repealed.

## LICENSED HOUSES.

### STATUTES.

#### INNOLDERS AND COMMON VICTUALLERS.

1. Penalty on innholder without license.
2. Aldermen, &c., may grant licenses, specifying place, &c.
3. Licenses to expire on the first of April.
4. Innholders to entertain travellers, &c.
5. Innholders, penalties on, for refusing, &c.

6. Rights, &c., of common victuallers.
7. Innholders, &c., to put up signs.
8. Punishment if fines are not paid.
9. On second conviction.
10. On third conviction.
11. Innholders, &c., not to give credit to students, &c.
12. Violating preceding section, &c.
13. Penalty.
14. Board of aldermen not obliged to license.
15. Officer may enter premises.
16. Same.

### STATUTES.

Penalty on innholder, &c., without license.  
G. S. 88, § 1.  
24 Pick. 352.  
6 Greenl. 412.

1. Whoever presumes to be an innholder or common victualler, without being licensed as such according to the provisions of chapter eighty-eight of the General Statutes, shall forfeit one hundred dollars.

Aldermen, &c., may grant licenses, specifying place, &c.  
G. S. 88, § 2.  
3 Pick. 281.

2. The county commissioners may grant licenses to as many persons to be innholders or common victuallers in the several towns within their respective jurisdictions as they think the public good requires; and the mayor and aldermen of the several cities may in like manner grant licenses to innholders and common victuallers in their respective cities. Every such license shall specify the street, lane, alley, or other place, and the number of the building, or some other particular description thereof, where such person shall exercise his employment; and

the license shall not protect a person exercising his employment in any other place than that specified in the license. G. S. 88, § 2.

3. Such licenses shall expire on the first day of April in each year; but a license may be granted or renewed at any time during the preceding month of March, to take effect from said first day of April; and after that day they may be granted for the remainder of the year, when the officers authorized to grant the same deem it expedient. Licenses to expire on first of April. Ibid. § 3.

4. Every innholder shall at all times be furnished with suitable provisions and lodging for strangers and travellers, and with stable room, hay, and provender for their horses and cattle; and if he is not so provided, the county commissioners or mayor and aldermen by whom the same was granted may revoke his license. Innholders to entertain travellers, &c. Ibid. § 8.

5. If an innholder when requested refuses to receive and make suitable provisions for strangers and travellers and their horses and cattle, he shall be punished by fine not exceeding fifty dollars, and shall by order of the court be deprived of his license; and the court shall order the sheriff or his deputy forthwith to cause his sign to be taken down. Penalties on for refusing, &c. Ibid. § 9.

6. Every common victualler shall have the rights and privileges, and be subject to the duties and obligations of innholders, except that he shall not be required to furnish lodging for travellers, nor stable room, hay, or provender for horses and cattle. Rights, &c., of common victuallers. Ibid. § 13.

7. Every innholder and common victualler shall at all times have a board or sign affixed to his house, shop, cellar, or store, or in some conspicuous place near the same, with his name at large, and the employment for which he is licensed thereon, and upon neglect thereof shall forfeit twenty dollars. Innholders, &c., to put up signs. Ibid. § 14.

8. Whoever is convicted under the preceding provisions, and fails to pay the fine and costs awarded against him, may be imprisoned in the jail for a time not exceeding ninety days, at the discretion of the court or justice before whom the trial is had. Punishment if fines are not paid. Ibid. § 15. 23 Pick. 280.

9. Whoever, licensed under the preceding provisions, is convicted a second time of a breach of any of said provisions, shall in addition to the penalties before provided be adjudged to have forfeited his license. On second conviction. G. S. 88, § 16.

On third conviction.  
G. S. 88, § 17.

10. Whoever is convicted a third time of a breach of any of the preceding provisions, shall, in addition to the penalties before provided, be punished by imprisonment in the jail not exceeding ninety days.

Innholders,  
&c., not to give  
credit to stu-  
dents, &c.  
Ibid. § 18.  
1 Pick. 177.

11. No innholder, tavern-keeper, retailer, confectioner, or keeper of any shop or house for the sale of drink or food, or any livery-stable keeper for horse or carriage hire, shall give credit to any student in an incorporated academy or other educational institution within this state.

Violating pre-  
ceding section,  
&c.  
G. S. 88, § 19.

12. No person shall be approved or licensed for either of the employments aforesaid, if it appears that he has given credit contrary to the provisions of the preceding section.

Penalty.  
Ibid. § 20.

13. Whoever gives credit contrary to the provisions of section eleven, shall forfeit a sum equal to twice the amount so unlawfully trusted or credited, whether the same is paid or not.

Commission-  
ers, &c., not  
required to  
license.  
No fee.  
Ibid. § 21.

14. Nothing contained in chapter eighty-eight of the General Statutes shall be construed to require the county commissioners or mayor and aldermen to grant either of the licenses aforesaid, when in their opinion the public good does not require it. And when such license is granted, no fee shall be charged therefor.

Officers may  
enter buildings,  
&c., to enforce  
laws.  
1862, 222.

15. By the Act of eighteen hundred and sixty-two, chapter two hundred and twenty-two, the provisions of the following section are extended to all buildings or other places named in any license granted to common victuallers.

Same subject.  
G. S. 88, § 72.  
See § 15.

16. Any marshal or his deputy, sheriff or his deputy, constable, police officer, or watchman, may at any time enter into any billiard-room, bowling-alley, or other room connected therewith, for the purpose of enforcing any law of the state; and whoever obstructs or hinders the entrance of such officer shall be punished by fine of not less than five, nor more than twenty dollars.

## LIME AND LIME CASKS.

## STATUTES.

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Inspectors of lime may be chosen to inspect lime.</li> <li>2. Casks of lime shall be branded.</li> <li>3. Fees of inspectors, and how paid.</li> <li>4. Stone lime not to be sold, &amp;c., unless well burnt and packed, &amp;c.</li> </ol> | <ol style="list-style-type: none"> <li>5. Maine lime, how packed, &amp;c.</li> <li>6. Penalty for selling lime in other casks.</li> <li>7. Forfeiture of lime, when, &amp;c.</li> <li>8. Penalty for shifting contents of casks.</li> </ol> |
|--|---|

## STATUTES.

1. Each city and town in which lime is manufactured or into which it is imported, may annually choose one or more inspectors of lime, who shall be sworn, and shall inspect all lime manufactured in such place at the time when it is filled at the kiln, and all lime imported or sold therein.

Inspectors of lime may be chosen; to be sworn.  
G. S. 49, § 118.

2. Every cask of lime so inspected shall be branded with the word *inspected*, with the first letter of the christian name and the whole of the surname of the inspector, and with the name of the place where it is manufactured.

Casks of lime, how branded.  
Ibid. § 119.

3. The inspectors shall receive for the inspection and branding of each cask of such manufactured lime, four cents, to be paid by the manufacturer or owner; and for the inspection of each cask of lime so imported or sold, the same sum, to be paid by the purchaser.

Fees.  
Ibid. § 120.

4. No stone lime manufactured within this state shall be sold, or exposed to sale, or shipped on board of a vessel, in casks, unless it is well burnt and pure, in good and sufficient new casks, containing either fifty or one hundred gallons each, made of well-seasoned heads and staves, with ten good and sufficient hoops on each cask, well driven and sufficiently secured with nails or pins.

Quality of lime and casks.  
Ibid. 121.

5. When an inspection is demanded of lime manufactured in and imported from the state of Maine, the inspector shall require that such lime be in casks manufactured from sound and well-seasoned lumber, with at least ten good hoops well driven and secured upon each cask; the staves of the cask shall

Description of casks for Maine lime.  
Same rules, &c., except as to size of casks.  
Ibid. § 122.

G. S. 49, § 121. be thirty inches in length and not less than half an inch in thickness ; the heads shall be not less than three fourths of an inch in thickness and shall be well crozed in ; each cask to be not less than twenty-six and one half inches between the heads and seventeen inches between the chimes, with a good and suitable bilge, and made in a workmanlike manner ; and the same rules, regulations, restrictions, and liabilities, except as to the size of the cask, shall apply to lime imported from the state of Maine, as are provided respecting lime manufactured in this state.

Penalty for  
selling in other  
casks, &c.  
Ibid. § 123.

6. Whoever sells, exposes to sale, ships, or receives on board of a vessel, in casks, any lime manufactured within this state, or the state of Maine, other than such as is contained in casks made according to the provisions of the preceding sections, and having the aforesaid marks or brands respectively, shall forfeit one dollar and fifty cents for each cask sold, offered for sale, shipped, or received on board of a vessel ; *provided*, that nothing contained in this chapter shall be construed to restrain any person from retailing lime by the bushel, or other quantities not in casks.

Forfeitures.  
Ibid. § 124.

7. If a cask of lime is sold, or exposed to sale, or put on board of a vessel, contrary to the provisions of this chapter, the same shall be forfeited, and an inspector may seize and libel the same.

Penalty for  
shifting con-  
tents of casks.  
Ibid. § 125.

8. If, after a cask containing lime has been branded as aforesaid, any person shifts the contents of such cask and puts therein other lime with intent to sell the same, he shall forfeit one dollar and fifty cents for each cask of lime so shifted.

## LUMBER.

## STATUTES.

1. Surveyor-general of lumber for the county of Suffolk and vicinity; how appointed; to give bonds, &c.

2. Appointment of deputies. Not to deal in lumber.
3. Surveyor-general to receive applications and direct surveys.
4. Shall keep record of surveys, fees, &c.

STATUTES.<sup>1</sup>

1. A surveyor-general of lumber shall be appointed by the governor, with the advice and consent of the council, for a district to consist of the county of Suffolk, the cities of Charlestown, Cambridge, and Roxbury, and the towns of Dorchester, Quincy, and Brighton. He shall reside in the district, keep an office in Boston conveniently located and accessible to the public, be sworn, give bond with sufficient sureties to the treasurer of the commonwealth in the sum of two thousand dollars for the faithful discharge of his duty, and hold his office for three years, and until a successor, is appointed and qualified, unless sooner removed.

Surveyor-general of lumber for Suffolk and vicinity, how appointed; to give bond, &c. G. S. 49, § 126.

2. He shall appoint a sufficient number of competent and discreet deputy-surveyors, removable at his pleasure, and for whom he shall be responsible; they shall be citizens of the places for which they are appointed, and be sworn and give bond to him for the faithful discharge of their duties. He shall appoint one or more of them to survey oak and other wood commonly used in ship-building, and one or more to survey mahogany, cedar, and other ornamental wood and lumber. No surveyor-general or deputy shall be a dealer in lumber of the kind he is appointed to survey, or survey any lumber in which he has a pecuniary interest, directly or indirectly, or for

Appointment of deputies. Ibid. § 127.

Not to deal in lumber. Ibid.

<sup>1</sup> The Revised Statutes, c. 28, § 155, authorized the city of Boston to pass ordinances for the appointment of surveyors and regulating the survey of lumber. Alterations were made by the Act of 1858, c. 164, and the Act of 1859, c. 224, made an entire change, and established a district for Boston and vicinity as described in the text, and Gen. Stats. c. 49, § 131, by implication, deprived Boston of the power to pass any ordinance on the subject.

G. S. 49, § 127. any person or persons by whom he is employed, by a salary or per diem allowance.

Surveyor-general to receive applications and direct surveys. Ibid. § 128. 3. All applications for surveys shall be made to him. All surveys made by his deputies and the order of their services, in rotation or otherwise, shall be under his directions, and he shall, by himself or his deputies, survey and admeasure all lumber brought into the district for sale, except lumber manufactured in this state, which shall also be surveyed when a request is made therefor by purchaser or seller.

Shall keep record of surveys, fees, &c. Ibid. § 129. 4. He shall keep a record of all lumber surveyed by himself or his deputies for any person or firm, and the amount of fees received by each, and as often as once in three months, and when collected by them, he shall be entitled to ten per cent. thereof. The record shall be at all times open to the inspection of any members of the city councils, and to the selectmen, of the several cities and towns in the district.

## MARBLE, SOAPSTONE, AND FREESTONE.

### STATUTES.

Mayor and Aldermen of cities and selectmen of towns to regulate measurement of marble, &c.

board of aldermen; tenure of office.

2. Duties of surveyors.

3. Fees of surveyors.

4. Certificate to be given by surveyors.

5. Penalty for selling marble, &c., not surveyed.

### REGULATIONS.

1. Appointment of surveyors by

### STATUTE.

City and town authorities may establish ordinances for survey of marble, &c.  
G. S. 49, § 145.  
1862, 70.

The mayor and aldermen and selectmen of a city or town may establish such regulations, with suitable penalties, respecting the appointment of a surveyor, and the survey and admeasurement of marble, soapstone, and freestone of every description, foreign or American, that is imported or brought into such place for sale, as they from time to time deem expedient.

REGULATIONS.<sup>1</sup>

SECTION 1. There shall be appointed annually, on the first Monday of February, or within sixty days thereafter, by the mayor and aldermen, one or more surveyors of marble, soapstone, and freestone, who shall hold their offices for one year, and until others are appointed in their places, and who shall be sworn to the faithful discharge of the duties of their office.

Appointment of surveyors by board of aldermen; tenure of office.  
April 1, 1863.

SECT. 2. It shall be the duty of the said surveyors to survey and admeasure all marble, soapstone, and freestone that is imported or brought into the city of Boston and offered for sale, and ascertain the number of cubic feet in each block, and the number of square feet in each slab of said marble, soapstone, or freestone, and legibly mark the same thereon, with the initials of the officer surveying it, and they shall give a certificate to the owner or vendor thereof, in the form hereinbefore provided.

Duties of surveyors.  
Ibid.

SECT. 3. The fees for surveying said marble, soapstone, and freestone shall be one cent for each cubic foot, and one half of a cent for each square foot surveyed as above directed, which shall be paid to the surveyor by the owner or vendor.

Fees of surveyors.  
Ibid.

SECT. 4. The certificate to be given to the owner or vendor of said marble, soapstone, or freestone shall specify the name of the owner or vendor, the name of the place from which the marble, soapstone, or freestone was imported or brought, the number of cubic feet in each block, and the number of square feet in each slab surveyed, the amount of fees received, and the date of the certificate.

Certificate to be given by surveyors.  
Ibid.

SECT. 5. No person shall sell any marble, soapstone, or freestone imported or brought into the city of Boston, unless the same shall have been surveyed as required by these regulations, under a penalty not exceeding fifty dollars for each and every offence.

Penalty for selling marble, &c., not surveyed.  
Ibid.

<sup>1</sup> Regulations respecting the sale of marble, soapstone, and freestone, passed by board of aldermen April 1, 1863.

MEAL, GRAIN, AND BREAD.

STATUTES.

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|---|--|
| 1. Grain and meal, how sold.                                  | 6. Penalty for false weights, &c., or collusion, &c. |
| 2. Weight of bushel.  | 7. Bread, weight of, how sold.                       |
| 3. Measurers of, to be appointed by mayor and aldermen. Duty. | 8. Prices of bread to be displayed where sold.       |
| 4. Penalty for short weight when measurer not employed.       | 9. Bread to be weighed in presence of buyer.         |
| 5. Fees of measurer, by whom paid.                            | 10. Penalty for violation of statutes.               |
|   | 11. Statute not to apply to rolls, &c.               |

STATUTES.

Grain and meal, how sold.  
G. S. 49, § 63.

1. In all contracts for the sale and delivery of wheat, corn, rye, oats, barley, buckwheat, cracked corn, ground corn, or corn meal, ground rye or rye meal, and any other meal except oatmeal, the same shall be bargained for and sold by the bushel.

Weight of bushel.  
Ibid. § 64.

2. A bushel of wheat shall be sixty pounds; a bushel of corn or rye, fifty-six pounds; a bushel of oats, thirty-two pounds; a bushel of barley, or buckwheat, forty-eight pounds; and a bushel of cracked corn, corn meal, rye meal, or any other meal except oatmeal, fifty pounds avoirdupois.

Measurers to be appointed by mayor and aldermen.  
Duty.  
Ibid. § 65.

3. The mayor and aldermen of cities and selectmen of towns shall annually appoint one or more measurers of grain, and when but one is appointed by them they may authorize him to appoint deputy-measurers. Each of such measurers and deputies shall, when called upon by either of the parties to a contract for the sale of any quantity exceeding one bushel of either of the articles mentioned in the preceding section, ascertain the weight thereof and give a certificate of the number of bushels as ascertained by weight according to the rule therein prescribed.

Penalty for short weight when measurer not employed.  
Ibid. § 66.

4. Whoever sells or delivers any quantity exceeding one bushel of either of the articles aforesaid, without the same having been weighed by one of the public measurers appointed under the preceding section, shall forfeit the sum of two dollars for every measured bushel so delivered not containing the number of pounds hereinbefore required, to be recovered by the purchaser in an action of tort.

5. The fees of such measurers shall be prescribed by the mayor and aldermen or the selectmen of the several places in which they are appointed, and shall be paid one half by the seller and one half by the purchaser.<sup>1</sup>

Fees of measurer, who to pay.  
G. S. 49, § 67.

6. If a measurer or deputy-measurer uses, or has in his possession with intent to use, for the purposes herein provided, any false weights, scales, balance, or other instrument for weighing, or colludes with the purchaser or seller with intent to defraud the other party, or makes and utters a false and fraudulent certificate under this chapter, he may be removed from office by the mayor and aldermen or selectmen, and shall also, on conviction thereof be punished by a fine not exceeding five hundred dollars, and by imprisonment not exceeding six months in the house of correction.

Penalty for false weights, &c., or collusion, &c.  
Ibid. § 68.

7. A loaf of bread for sale shall be two pounds in weight. Bread, except that composed in chief part of rye or maize, shall be sold in loaves, half, three quarter, and quarter, loaves, but not otherwise.

Bread, weight of; how sold.  
Ibid. § 5.

8. In every shop or place where bread is sold by retail, and in each front window thereof, there shall be conspicuously placed a card, on which shall be legibly printed a list of the different kinds and qualities of loaves sold there, with the price of each by the loaf, half, three quarter, and quarter, loaf.

Prices of bread, &c., to be displayed where sold.  
Ibid. § 6.

9. Bread sold in any shop or place shall be weighed in presence of the buyer, and if found deficient in weight, bread shall be added to make up the legal weight.

Bread to be weighed, &c.  
Ibid. § 7.

10. Whoever violates either of the provisions of the three preceding sections shall forfeit ten dollars for each offence, to be recovered in an action of tort to the use of the party suing therefor.

Penalty.  
Ibid. § 8.

11. The four preceding sections shall not apply to rolls or fancy bread weighing less than one quarter of a pound.

Rolls, &c.  
Ibid. § 9.

<sup>1</sup> May 28, 1855, the fees of the measurers were fixed by the board of aldermen, at the rate of fifty cents for one hundred bushels.

## MESSENGER.

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|--|-----------------------------|
| 1. Messenger to city council, how<br>chosen. | 3. To appoint an assistant. |
| 2. His duties.                               | 4. Compensation.            |

ORDINANCE.<sup>1</sup>

Messenger to  
city council,  
how elected,  
Oct. 14, 1852.

1. There shall be annually elected on the first Monday of February, or within sixty days thereafter, by concurrent vote of both branches of the city council, a messenger to the city council, who shall hold his office for one year if not sooner removed, from the first Monday of April, in the year in which he shall be chosen, and till another is chosen in his place, subject to removal at any time by the city council.

His duties.  
Ibid.

2. The said officer shall devote his whole time to the service of the city, and shall attend all meetings of the board of aldermen, and of the common council, and of the school committee. He shall have the general care and custody of the City Hall, and of the various apartments thereof. He shall wait upon all committees and boards when in session at the City Hall, and, in general, shall perform all services required by the mayor, by either branch of the city council, or by such committees or boards.

To appoint an  
assistant.  
Ibid.

3. The said officer shall appoint an assistant, subject to the approval of the city council, who shall hold his office one year, unless sooner removed by him or by the city council.

Compensation.  
Ibid.

4. The said messenger and his assistant shall receive such compensation as the city council may from time to time determine.

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<sup>1</sup> An ordinance establishing the office of messenger to the city council, passed October 14, 1852.

## MILK.

## STATUTES.

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Inspectors of milk, how appointed; to be sworn and give notice.</li> <li>2. Inspectors to keep office, books, &amp;c.; may enter stores, &amp;c., and take and analyze milk, &amp;c.</li> <li>3. Measures of milk to be sealed.</li> <li>4. Penalty for selling in unsealed measures.</li> </ol> | <ol style="list-style-type: none"> <li>5. Penalty for neglect to record name, &amp;c., in inspector's books.</li> <li>6. Penalty for offering for sale milk from cows fed upon the refuse of distilleries, &amp;c.</li> <li>7. Penalty for selling adulterated milk, &amp;c. First offence, subsequent offences.</li> <li>8. Names of persons convicted to be published.</li> </ol> |
|--|---|

## STATUTES.

1. The mayor and aldermen of cities shall, and the selectmen of towns may, annually, appoint one or more persons to be inspectors of milk for their respective places, who shall, before entering upon the duties of their offices, be sworn. Each inspector shall give notice of his appointment by publishing the same two weeks in a newspaper published in his city or town, or if no newspaper is published therein, by posting up such notice in two or more public places in such town.

Inspectors of milk, how appointed; to be sworn and give notice.  
G. S. 49, § 148.

2. The inspectors shall keep an office and books for the purpose of recording the names and places of business of all persons engaged in the sale of milk within their limits; they may enter any place where milk is stored or kept for sale, and all carriages used in the conveyance of milk, and whenever they have reason to believe any milk found therein is adulterated, they shall take specimens thereof and cause the same to be analyzed, or otherwise satisfactorily tested, and they shall preserve a certificate of the result of said analysis or test, sworn to by the analyzer or tester; and said certificate shall be admissible in evidence in all prosecutions for all violations of the provisions of section seven, which it shall be their duty to prosecute. They shall receive such compensation as the mayor and aldermen or selectmen determine.

To keep office, books, &c.  
May enter stores, &c., and take and analyze milk, &c.  
Ibid. § 149.  
1860, 165, § 2.

3. All measures, cans, or other vessels, used in the sale, or buying at wholesale, of milk, shall be annually sealed by the

Measures to be sealed.  
G. S. 49, § 150.

G. S. 49, § 150. sealer of weights and measures by wine measure ; and all cans so used shall be marked by the sealer with figures showing the quantity which they hold.

Penalty for selling in unsealed measures.  
1863, 140, § 1.

4. Whoever buys or sells milk by any other measures, cans, or vessels, than those sealed as provided in the section next preceding, (section three,) shall for one violation pay twenty dollars, and for a second and each subsequent violation, fifty dollars.

Penalty for neglect to record name, &c.  
G. S. 49, § 151.  
1 Allen, 593.

5. Whoever neglects to cause his name and place of business to be recorded in the inspector's books, and his name legibly placed upon all carriages used by him in the conveyance of milk, before engaging in the sale thereof, shall forfeit twenty dollars for each offence.

Penalty for offering for sale certain milk.  
1860, 165, § 1.

6. Whoever offers for sale milk produced from cows fed upon the refuse of distilleries, or any substance deleterious to the quality of the milk, shall forfeit twenty-five dollars for the first, and fifty dollars for every subsequent offence.

Penalty for selling adulterated milk, &c.  
1863, 140, § 2,  
1 Allen, 593.

7. Whoever adulterates, by water or otherwise, milk to be sold in this state, or being recorded in the books of the inspector as a dealer in milk, conveys from place to place, or knowingly sells or causes to be sold adulterated or unwholesome milk, shall for one violation pay twenty dollars, for a second violation pay fifty dollars, and for any subsequent violation, be imprisoned in the house of correction not less than thirty nor more than ninety days ; and whoever, in the employment of another, knowingly violates any provision of this section, shall be held equally guilty with the principal, and suffer the same penalty or punishment.

Names of persons convicted to be published.  
1863, 140, § 3.

8. It shall be the duty of the inspector to cause the name and place of business of all persons convicted under the preceding section, to be published in two newspapers printed in the town or county where the offence may have been committed.<sup>1</sup>

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<sup>1</sup> An ordinance concerning the inspection of milk, passed June 22, 1859, is omitted, for the reason that all the power, granted by the General Statutes, is vested in the mayor and aldermen alone, who may appoint inspectors, and fix their compensation.

MOUNT HOPE CEMETERY.<sup>1</sup>

## STATUTE.

Boston may purchase land for a cemetery in any town with the consent of said town.

## ORDINANCE.

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|--|--|
| <ol style="list-style-type: none"> <li>1. Trustees of cemetery elected; term of office; duties; vacancies.</li> <li>2. Two additional trustees to be elected.</li> <li>3. Free burial-place shall be set off; cemetery to be laid out in lots, &amp;c. Trustees may make by-laws.</li> <li>4. Trustees may sell rights, lots, &amp;c.</li> </ol> | <ol style="list-style-type: none"> <li>5. Proceeds of sales to be kept separate and expended for improvement of cemetery.</li> <li>6. Trustees may take and hold bequests, &amp;c.</li> <li>7. Bequests to be invested, how and for what.</li> <li>8. City responsible for doings of trustees, &amp;c.</li> <li>9. City registrar to be secretary of trustees; his duties.</li> <li>10. Form of deed for conveyance of lots. Conditions of sale.</li> <li>11. Deeds to be signed by chairman, &amp;c.</li> <li>12. Deeds to be recorded.</li> <li>13. Trustees to make report in January, or whenever required.</li> </ol> |
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## STATUTE.

The city of Boston is hereby authorized to purchase and hold land for a public cemetery, in any town in this commonwealth, and to make and establish all suitable rules, orders, and regulations for the interment of the dead within the limits of the said city; *provided*, that the consent of any town, in which the said cemetery is proposed to be located, shall first be obtained for the purpose.

City of Boston may establish a cemetery in any town in the commonwealth, with its consent. 1849, 150.

<sup>1</sup> Mount Hope Cemetery, situated in the towns of Dorchester and West Roxbury, about five miles from Boston, contains eighty-four and three fourths acres. It was set apart for a cemetery by individuals, who were incorporated under powers given by the Revised Statutes, November 10, 1851, and was consecrated by appropriate ceremonies June 24, 1852. Sales of four hundred and twenty-seven lots were made by the company, and improvements were in progress from year to year. By deed dated July 31, 1857, (recorded with Norfolk Deeds, lib. 258, fol. 165,) it was conveyed to the city for the sum of \$35,000. Four and three fourths acres at the westerly end have been set off for the benefit of the inhabitants of the city free of charge, and is called the History of.

ORDINANCE.<sup>1</sup>

Trustees to be  
elected; their  
duties.  
Dec. 21, 1857.

Term of office.

Vacancy, how  
filled.

Term of office,  
how deter-  
mined.

SECTION 1. There shall be elected, by concurrent vote of the two branches of the city council, a board of five trustees, for the term of five years, who (with the two trustees named in the second section of this ordinance), shall have the sole care, superintendence, and management of the Mount Hope Cemetery, situated in the towns of Dorchester and West Roxbury, in the county of Norfolk, and belonging to the city of Boston, one member of which board shall go out of office each year, and one member shall be chosen annually, on the first Monday of February, or within sixty days thereafter; but said board, or either member thereof, after having had an opportunity to be heard in his or their defence, may be removed at any time by a concurrent vote of two thirds of each branch of the city council, and in case of a vacancy in said board of trustees, by death, resignation, removal, or otherwise, such vacancy shall be filled by the choice of another trustee, in the manner aforesaid, who shall hold his office for the residue of the time for which such member so deceased, resigned, or removed would have held the same. Said board may be organized by the choice of a chairman from their own number; and a majority of said board shall constitute a quorum for the exercise of the powers and duties of the said office. And the term for which the several members of the first board of trustees shall hold their office, shall be determined by the city council as follows: the trustee first chosen shall hold his office for five years; the trustee next chosen, for four years; the trustee next chosen for three years; the trustee next chosen, for two years; and the trustee next chosen, for one year.

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“City Cemetery.” In 1861 a house was erected for the superintendent, containing rooms for the trustees, at a cost of \$6,281.96.

The proceeds of sales are paid into the city treasury, kept separate from other funds of the city, and, under the direction of the trustees, are expended in improvements of the cemetery. The whole cost of purchase and improvements May 1, 1863, amounted to \$93,450.79; proceeds of sales received to same date, \$18,554.10.

<sup>1</sup> An ordinance, in relation to Mount Hope Cemetery, passed December 21, 1857, and an ordinance in addition thereto, passed March 24, 1863.

SECT. 2. In addition to the number of trustees provided for by the ordinance of December 21, 1857, there shall be elected annually on the first Monday of February, or within sixty days thereafter, one alderman and one member of the common council, who shall hold their offices for one year from the first Monday of April in the year of their election, and until others are chosen in their places, and who, together with the present trustees and those hereafter chosen as provided in said ordinance, shall constitute the board of trustees of said cemetery, with all the rights and powers, and subject to all the requirements, contained in said ordinance.

Two additional trustees.  
March 24, 1863.

SECT. 3. The said board of trustees shall set apart and appropriate a portion of said cemetery as a public burial-place for the use of the inhabitants of the city of Boston, free of any charge therefor; and they shall lay out said cemetery in suitable lots or other subdivisions for family or other burial places, with all the necessary paths and avenues, and may plant and embellish the same with trees, shrubs, flowers, and other rural ornaments; and may enclose and divide the same with proper fences, and erect or annex thereto such suitable edifices, appendages, and conveniences as they shall from time to time deem expedient; and said board may make all necessary by-laws, rules and regulations, in the execution of their trust, not inconsistent with the ordinances of the city or the laws of the commonwealth, as they may deem expedient.

Free burial-place to be set off.  
Dec. 21, 1857.

Cemetery to be laid out, &c.

Trustees may make by-laws.

SECT. 4. Said board of trustees shall have authority to grant and convey to any person or persons, by deed duly executed, the sole and exclusive right of burial, and of erecting tombs, cenotaphs, and other monuments, in any of the designated lots or subdivisions of said cemetery, upon such terms and conditions as they shall by their rules and regulations prescribe.

Trustees may sell rights of burial, &c.  
Ibid.

SECT. 5. The proceeds of lots and rights of burial in said cemetery shall be paid into the city treasury, to be kept separate from any other funds of the city, and subject to the order of said trustees; and such proceeds shall be devoted to the liquidation of all amounts paid by the city on account of said cemetery, either for land or for the improvement and embellishment

Proceeds of sales to be kept separate.  
Ibid.

Dec. 21, 1857.

thereof, as aforesaid, under the direction of said board of trustees, who shall also have the control of any appropriation which may be made to the cemetery by the city council.

Trustees may hold, &c., bequests, Ibid.

SECT. 6. The board of trustees are authorized to take and hold any grant, donation, or bequest of property, upon trust; to apply the same or the income thereof, for the improvement or embellishment of the said cemetery, or for the erection, repair, preservation, or renewal of any monument, fence, or other erection, or for the planting or cultivation of trees, shrubs, or plants in and around any lot; or for improving the said premises in any other manner or form consistent with the purposes for which said cemetery is established, according to the terms of such grant, donation, or bequest. And whenever any such grant, donation, or bequest, or any deposit shall be made by the proprietor of any lot in said cemetery, for the annual repair, preservation, or embellishment of such lot and the erections thereon, the said trustees may give to such proprietor, or his representative, an agreement or obligation in such form and upon such terms and conditions as they may establish, binding themselves and their successors to preserve and keep in repair said lot, forever, or for such period as may be agreed on.

Bequests to be invested; how and for what. Ibid.

SECT. 7. Any sums of money so received by said trustees, shall be invested by the city treasurer in public stocks, or mortgages of real estate, which shall always remain separate from and independent of any other moneys or property belonging to the city of Boston, and free from the control of the city council. And the income of such fund or funds shall be received by said treasurer, subject to the order of said trustees, and shall be appropriated by them in such manner as shall, in their opinion, best promote the purposes for which said grants, donations, bequests, or deposits are made.

City liable for doings of trustees, &c. Ibid.

SECT. 8. The city of Boston shall be responsible for the good faith of said trustees, and the treasurer of said city, in the execution of any trust which they may assume pursuant to the foregoing provisions. But the said trustees shall not be liable to make any renewal of any monument or other erection on any lots in said cemetery, unless such liability shall be expressed in

the agreement under which they accept any grant, donation, or Dec. 21, 1857. bequest.

SECT. 9. The city registrar shall act as secretary of said City registrar to be secretary of trustees. board of trustees; he shall receive all applications for lots and rights of burial, and under the direction of said trustees, shall <sup>Ibid.</sup> make all deeds of the same, and pay all sums of money received on account of the cemetery, to the city treasurer, and perform such other duties in relation to the cemetery as the trustees may from time to time require.

SECT. 10. The form of the deeds to be executed for the conveyance of lots in said cemetery, by said trustees, shall be Form of deed for conveyance of lots. <sup>Ibid.</sup> as follows, viz:—

Know all men by these presents, that the city of Boston, in the county of Suffolk and commonwealth of Massachusetts, in consideration of ——— dollars, paid to it by ——— ———, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey to said ——— ——— heirs and assigns, one lot of land in the rural cemetery in Dorchester and West Roxbury, called the Mount Hope Cemetery, and the sole and exclusive right of burial of the dead therein: the said granted lot contains ——— superficial square feet, and is numbered ——— on the plan of said cemetery, which is in the possession of the board of trustees, having the care, superintendence, and management thereof, and may be inspected by the said grantee, — heirs and assigns, at all reasonable times. To have and to hold the aforegranted premises unto the said ——— ——— heirs and assigns forever; but subject to the restrictions, limitations, and conditions, and the privileges following, viz:—

*First.* That the proprietor of the said lot shall have the right Restrictions, conditions, and privileges. to enclose the same with a wall or fence, not exceeding one foot in thickness, which may be placed on the adjoining land of said city, exterior to said lot.

*Second.* That the said lot shall not be used for any other purpose than as a place of burial for the dead; and no trees within the lot or border shall be cut down or destroyed, without the consent of the said trustees.

*Third.* That the proprietor of said lot shall have the right to

Dec. 21, 1857.

erect monuments, cenotaphs, or stones, commemorative of the dead ; or to cultivate trees, shrubs, or plants in the same.

*Fourth.* That the proprietor of said lot shall erect at — own expense, suitable landmarks of stone or iron at the corners thereof, and shall cause the number thereof to be legibly and permanently marked upon the premises ; and if the proprietor shall omit for thirty days after notice to erect such landmarks and to mark the number, the trustees shall have authority to have the same done at the expense of the said proprietor.

*Fifth.* That if any trees or shrubs in said lot shall become in any way detrimental to the adjacent lots or avenues, or dangerous, or inconvenient, it shall be the duty of said trustees for the time being, to enter into said lot and remove said trees or shrubs, or such parts thereof as are thus detrimental, dangerous, or inconvenient.

*Sixth.* That if any monument, effigy, cenotaph, or other structure whatever, or any inscription be placed in or upon said lot which shall be determined by a majority of said trustees, for the time being, to be offensive and improper, the said trustees, or a majority of them, shall have the right and it shall be their duty to enter upon said lot and remove said offensive or improper object or objects.

*Seventh.* No fence shall, at any time, be erected or placed in or around said lot, the materials or design of which shall not first have been approved by said trustees or a committee of them.

*Eighth.* No tomb shall be constructed or allowed within the bounds of the cemetery, unless by special permission of said board of trustees, and in such places and in such manner as the trustees shall direct. And no proprietor shall suffer the remains of any person to be deposited within the bounds of his lot for hire.

*Ninth.* The said lot shall be indivisible ; and upon the death of the grantee, the devisee of said lot, or the heir-at-law, shall be entitled to all the privileges of the original grantee ; and if there be more than one devisee or heir-at-law, the said trustees shall designate the one who shall have possession of the said lot ;

and in making such designation, said trustees shall, as far as Dec. 21, 1857. they conveniently may, give preference to males over females, and to proximity of blood, priority of age, and with due regard to proximity of residence.

*Tenth.* The said lot shall be holden subject to all by-laws, rules and regulations, made and to be made by the said board of trustees, in pursuance of authority granted to them in and by any ordinance or ordinances of the city of Boston. And the said city of Boston hereby covenants to and with the said ——— heirs and assigns, that the said city is lawfully seised in fee-simple of the aforegranted premises and of the ways leading to the same from the highway, that the granted premises are free from all incumbrances, that the said city hath good right to sell and convey the same to the said ———, in the manner and for the purpose aforesaid, and will WARRANT and defend the same unto the said ———, heirs and assigns forever.

IN WITNESS WHEREOF, the said city of Boston hath caused these presents to be signed by ———, the chairman of the said board of trustees, to be countersigned by ———, their secretary, and the treasurer of the said city, and to be sealed with its common seal, this ——— day of ———, in the year of our Lord eighteen hundred and ———.

Signed, sealed, and delivered  
in presence of

—— ——— Chairman.  
—— ——— Secretary.

—— ——— City Treasurer.

City of Boston,

City Registrar's office,

18

I hereby certify, that the foregoing deed has been received, entered, and recorded in this office, in the book provided for the purpose, being book No. ———, and page No. ———.

—— ——— City Registrar.

SECT. 11. All deeds executed in conformity to the preceding section shall be signed by the chairman of the board of trustees of Mount Hope Cemetery, and countersigned by their secretary, Deeds to be signed by chairman, &c. Ibid.

Dec. 21, 1857. and the city treasurer, and shall have the city seal affixed thereto.

Deeds to be  
recorded.  
Ibid.

SECT. 12. Said deeds shall be recorded by the city registrar in a book provided for that purpose, and to be kept in his office.

Trustees shall  
make report to  
city council.  
Ibid.

SECT. 13. Said board of trustees shall annually, in the month of January, and whenever required by the city council, make and render a report in writing, of all their acts and proceedings, and of the condition of the cemetery, and an account of the receipts and expenditures for the same, and the funds subject to their order.<sup>1</sup>

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## NOTICES AND PLACARDS.

### ORDINANCE.

1. No person shall post notices, placards, or bills on buildings, &c., without consent.
2. Fine.

### ORDINANCE.<sup>2</sup>

No person to  
post notices on  
buildings, &c.,  
without con-  
sent.  
April 28, 1853.

SECTION 1. No person shall post up or affix in any manner any bill, placard, or notice, either written or printed, upon the fences, walls, or upon any part of any building in the city of Boston, without the previous consent of the occupants thereof, or, if there be no occupants, without the previous consent of the owners thereof; nor upon any part of any building belonging to the city of Boston, without the previous consent of the mayor.

Fine.

SECT. 2. Any person offending against any of the provisions of this ordinance shall be punished by fine not exceeding fifty dollars.

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<sup>1</sup> For penalties for injuries done in cemeteries to gravestones, fences, trees, &c., &c., see *ante*, pp. 303, 304, §§ 75, 76.

<sup>2</sup> An ordinance in relation to posting notices and placards on buildings, passed April 28, 1853.

NUISANCES.

STATUTES.

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|---|--|
| <p>1. Burnt or dangerous buildings adjudged nuisances, how disposed of.</p> <p>2. Owner aggrieved may apply for jury.</p> | <p>3. Verdict of jury, &amp;c.</p> <p>4. Costs.</p> <p>5. Nuisances may be abated, &amp;c.</p> <p>6. Booths, &amp;c., used for gaming, &amp;c., near public shows, &amp;c., how to be removed.</p> |
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STATUTES.

1. In any city or town which has adopted chapter four hundred and sixty-nine of the Statutes of eighteen hundred and fifty-five, or which shall adopt this and the four following sections, at a legal meeting of the city council<sup>1</sup> or inhabitants of the town, if the mayor and aldermen or selectmen, after due notice in writing to the owner of any burnt, dilapidated, or dangerous building, and a hearing of the matter, adjudge the same to be a nuisance to the neighborhood, or dangerous, they may make and record an order prescribing such disposition, alteration, or regulation thereof as they deem necessary; and thereupon the city or town clerk shall deliver a copy of the order to a constable, who shall forthwith serve an attested copy thereof upon such owner, and make return of his doings thereon to said clerk.

Burnt or dangerous buildings adjudged nuisances, how disposed of.  
G. S. 87, § 1.

2. Any owner aggrieved by such order may within three days of the service thereof upon him apply for a jury to the superior court, if sitting in the county or to any justice thereof in vacation. The court or justice shall issue a warrant for a jury, to be empanelled by the sheriff within fourteen days from the date of the warrant, in the manner provided in chapter forty-three of the General Statutes relating to highways.

Owner aggrieved may apply for jury.  
Ibid. § 2.

3. The jury may affirm, annul, or alter such order; and the sheriff shall return the verdict to the next term of the court for acceptance, and, being accepted, it shall take effect as an original order.

Verdict of jury, &c.  
Ibid. § 3.

4. If the order is affirmed, costs shall be taxed against the

Costs.

<sup>1</sup> Adopted by the city council of Boston, March 17, 1860. See *City Records*, vol. 38, pp. 135, 142.

G. S. 87, § 4.

applicant ; if it is annulled, the applicant shall recover damages and costs against the city or town ; if it is altered in part, the court, may render such judgment as to costs as justice shall require.

Nuisance may  
be abated, &c.  
Ibid. § 5.

5. The mayor and aldermen or selectmen of any city or town shall have the same power and authority to abate and remove any such nuisance, as are given to the board of health in sections eight, nine, and ten of chapter twenty-six of the General Statutes.<sup>1</sup>

Booths, &c.,  
used for gam-  
ing, &c., near  
public shows,  
&c., how re-  
moved.  
Ibid. § 10.

6. The mayor and aldermen or selectmen of any place, upon complaint made to them under oath, that the complainant has reason to believe, and does believe, that any booth, shed, or other temporary erection, situated within one mile of any muster-field, cattle-show ground, or other place of public gathering, is used and occupied for the sale of spirituous or fermented liquors, or for the purpose of gaming, may, if they consider the complaint well founded, order the owner or occupant thereof to vacate and close the same forthwith. If the owner or occupant refuses or neglects so to do, the mayor and aldermen or selectmen may forthwith abate such booth, shed, or erection as a nuisance, and pull down or otherwise destroy the same in any manner they choose, or through the agency of any force, civil or military.

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## OFFICERS AND OFFICE HOURS.

### ORDINANCE.

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| <ol style="list-style-type: none"> <li>1. Time of election or appointment of certain city officers.</li> <li>2. Tenure of office. Removals and vacancies.</li> <li>3. Mayor to make his nominations to board of aldermen.</li> <li>4. Certain provisions directory.</li> <li>5. Clerk of committees to be elected ; his duties.</li> <li>6. Other duties may be imposed on clerk ; his salary.</li> </ol> | <ol style="list-style-type: none"> <li>7. Committee on public buildings to assign, &amp;c., offices, &amp;c.</li> <li>8. Office hours of treasurer.</li> <li>9. Office hours of city clerk, auditor, and registrar.</li> <li>10. Office hours of assessors.</li> <li>11. Officers to attend at other times if required.</li> <li>12. Duties of city clerk.</li> <li>13. Repeal of previous ordinances.</li> </ol> |
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<sup>1</sup> See *Health*, ante, p. 291, §§ 8, 9, 10.

ORDINANCE.<sup>1</sup>

SECTION 1. All city officers required by the city ordinances to be elected or appointed by the concurrent vote of the city council, or to be appointed by the mayor, by and with the advice and consent of the board of aldermen, excepting those officers the time of whose election or appointment is otherwise prescribed by the statutes of the commonwealth; also excepting the treasurer, auditor, and assessors, shall be elected or appointed as the case may be, on the first Monday of February in each year, or within sixty days thereafter.

Time of election  
or appointment  
of city officers.  
June 14, 1862.

Exceptions.

SECT. 2. Every city officer elected or appointed under the provisions of the foregoing section shall hold his office, if not sooner removed, for one year from the first Monday of April in the year in which he shall be elected or appointed, and until a successor be elected or appointed and qualified; but he may at any time be removed by the authority under which he may have been elected or appointed, and any vacancy occasioned by the removal, resignation, or death of such city officer may be filled at any time.

Tenure of office.  
Ibid.

Removal and  
vacancies.  
Ibid.

SECT. 3. In all cases wherein appointments to office are directed by any law or ordinance to be made by the mayor and aldermen, or by the mayor, by and with the advice and consent of the aldermen, the mayor shall send his nominations to the board of aldermen, directed to the city clerk, who shall forthwith enter the same in a book kept for that purpose. And whenever the mayor shall remove any officer, he shall send information thereof to the said board, which shall be entered on their record at the next meeting.

Mayor to make  
his nominations  
to board of  
aldermen.  
Ibid.  
See p. 20, § 49,  
*ante*.

SECT. 4. Whenever any ordinance shall provide for the election of any city officer, at or within a time specified, such provision shall be considered merely as directory; and an election after the expiration of such time shall be valid.

Certain provis-  
ions directory  
merely.  
Sept. 9, 1850.

SECT. 5. There shall be chosen annually, as provided in section one, by concurrent vote of both branches of the city

Clerk of com-  
mittees, how  
and when

<sup>1</sup> Ordinances passed September 19, 1850, July 2, 1857, and June 14, 1862.

elected; his  
duties.  
July 2, 1857.

council, a clerk of all committees, except the committees on claims, and on laying out and widening streets, and it shall be the duty of said clerk to attend, when required, the meetings of all the committees, standing and special, of both branches of the city council, and of all joint committees, standing and special, and to keep a fair record in books to be kept for the purpose, of all the doings, proceedings, and transactions of all such committees. He shall keep a calendar of all the meetings of said committees, and shall notify the members of said committees of the time and place of such meetings.

Other duties  
may be  
required.  
Ibid.

SECT. 6. Said clerk, when no committee is in session, shall render such services in the office of the superintendent of public buildings, as may from time to time be prescribed by the chairman of the committee on public buildings for the time being. He shall also perform all such other duties and services as the said committees, or either of them, shall from time to time require, and shall receive in full for all his services such salary as the city council may from time to time fix and determine.

Salary.  
Ibid.

Committee on  
public buildings  
to assign, &c.,  
offices and  
rooms.  
Sept. 9, 1850.

SECT. 7. It shall be the duty of the committee on public buildings, under the direction of the board of aldermen, to assign and furnish in a proper manner suitable offices and rooms in the public buildings, or to procure the same elsewhere at the expense of the city, for the various city officers.

Office hours of  
treasurer.  
Ibid.

SECT. 8. The office hours of the city treasurer shall be from nine of the clock in the forenoon until two of the clock in the afternoon.

Office hours of  
city clerk,  
auditor, and  
registrar.  
Ibid.

SECT. 9. The office hours of the city clerk, the auditor of accounts, and the city registrar, shall be, from the first day of April to the first day of October, from eight of the clock in the forenoon until two of the clock in the afternoon, and from three and one half of the clock in the afternoon until six of the clock in the afternoon; and the remainder of the year, from nine of the clock in the forenoon until two of the clock in the afternoon, and from three and one half of the clock until five of the clock in the afternoon.

Office hours of  
assessors,  
Ibid.

SECT. 10. The office hours of the assessors shall be the same as those appointed in the next preceding section, except

for such portion of the year as they may be necessarily absent, Sept. 9, 1850.  
for the purpose of appraising the real and personal property,  
and obtaining the number of polls, for taxation.

SECT. 11. Each of the officers, before named, shall attend to the duties of their several offices at such other times as the board of aldermen may deem the interest of the city to require. Officers to attend at other times, if required. Ibid.

SECT. 12. The city clerk, under the direction and control of the board of aldermen, shall have the care and custody of the city records, and of all documents, maps, plans, and papers, respecting the care and custody of which no other provision is made. He shall attend and keep the records at all meetings of the city council. Duties of city clerk. Ibid.

SECT. 13. The ordinance in "relation to city officers," passed March 5, 1856, is hereby repealed, together with all other ordinances and parts of ordinances inconsistent herewith. Repeal of former ordinances. June 14, 1862.

## ORDINANCES AND BY-LAWS.<sup>1</sup>

### STATUTES.

1. By-laws may be annulled by the general court.
2. Powers and duties of cities to continue as specified in their charter.
3. Powers of the city council to make by-laws as granted by the charter.
4. Same — as granted by the General Statutes.
5. By-laws to bind all persons in the city.
6. By-laws to be published, &c.
7. Special acts, &c., need not be set out in complaint, &c.
8. Duties imposed in by-laws, how performed.
9. What city officers may prosecute.

10. Fines and forfeitures, how recovered and to whose use.
11. How prosecutions under by-laws may be discontinued.
12. Police court of Boston has jurisdiction.
13. How fines, &c., may be recovered and appropriated, by special acts.

### ORDINANCE.

1. Enacting style of city ordinances.
2. Ordinances to be examined, enrolled, and recorded.
3. Ordinances of the city council, and the rules and regulations of the board of aldermen, to be published. This provision to be directory merely.
4. Fines to inure to the use of the city, except, &c.

<sup>1</sup> All by-laws must be reasonable, or they are void. Whether a by-law be reasonable or not, is for the court to determine, and evidence to the jury on

## STATUTES.

By-laws may be annulled by general court. Const. of Mass. Amend. Art. 2. Adopted 1821.

1. It is provided, by the constitution of the commonwealth, that all by-laws, by municipal or city governments, erected and constituted by the general court, shall be subject, at all times, to be annulled by the general court.

Powers, &c., of cities to continue. G. S. 19, § 1.

2. The several cities shall continue to have and exercise all the powers and privileges, and be subject to all duties and liabilities, mentioned in the acts establishing such cities and in the several acts relating thereto.

Power of city council to make by-laws. 1854, 448, 35.

3. The City Charter, section thirty-five, provides that the city council shall have power to make all such needful and salutary by-laws or ordinances, not inconsistent with the laws of this commonwealth, as towns by the laws of this commonwealth have power to make and establish, and to annex penalties, not exceeding fifty dollars, for the breach thereof, which by-laws shall take effect and be in force from and after the times therein respectively limited, without the sanction or confirmation of any court, or other authority whatsoever.

Towns, &c., may make by-laws and affix penalties. G. S. 18, § 11. 3 Pick. 462. 1 Met. 130. 1 Cush. 494. 2 Cush. 562.

4. Towns may make such necessary orders and by-laws, not repugnant to the laws of the state, for directing and managing the prudential affairs, preserving the peace and good order, and maintaining the internal police thereof, as they may judge most conducive to the welfare of the town; and may affix penalties

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that question is inadmissible. *Commonwealth v. Worcester*, 3 Pick. 462. The mayor and aldermen of Boston have no power to suspend a by-law of the city, nor to authorize a violation of it. *Ibid.* By the Gen. Stats. c. 18, § 16, it is provided that all by-laws made by any town shall be published in one or more newspapers printed in the county where such town is situated. The by-laws made by any town are binding upon all persons coming within the limits thereof, as well as upon the inhabitants of such town. *Ibid.* § 15. See also *Vandine's case*, 6 Pick. 187. A by-law may be good in part, and void for the rest. *Rogers v. Jones*, 1 Wend. (N. Y.) 260. See *Austin v. Murray*, 16 Pick. 121. *Commonwealth v. Dow*, 10 Met. 382. By-laws cannot be made to operate retrospectively. *Howard v. Savannah*, Charlt. (Geo.) 173. A by-law of a town or corporation, imposing penalties for particular offences, seems not to be void merely because a general law of the state imposes penalties for the same offences. *Rogers v. Jones*, 1 Wend. (N. Y.) 237. See 1 Bay, 382.

for breaches of such orders and by-laws not exceeding twenty G. S. 18, § 11. dollars for one offence.<sup>1</sup>

5. Such by-laws shall be binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof. By-laws bind all persons in town.  
6 Pick. 187. 2 Cush. 576. Ibid. § 15.

6. All by-laws made by a town shall be published in one or more newspapers printed in the county where the town is situated. To be published.  
G. S. 18, § 16.

7. In a complaint, prosecution, or other process, founded on a special act of the legislature, an ordinance or by-law of any city or town, or an order of the mayor and aldermen, it shall be sufficient to set forth the offence fully, plainly, substantially, and formally; and no part of such law, ordinance, by-law, or order, need be set forth. Special acts, &c., need not be set out in complaint, &c.  
Ibid. 171, § 16.  
3 Pick. 462.

8. When a town in a by-law imposes a duty and affixes a penalty for refusal or neglect to perform the same, they may therein provide that in case of such refusal or neglect, the duty may be performed by officers therein named, at the expense of the party liable to perform the same, and such expense may be recovered of him by the town in an action of contract in the name of the treasurer, but the amount recovered shall not exceed the penalty fixed in the by-law. Duties imposed in by-laws, how performed.  
G. S. 18, § 13.

9. The city marshal or other principal police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city or the poor thereof, and may also prosecute for trespasses committed on any public building or enclosure within the limits of the city. City officers may prosecute, &c.  
Ibid. 19, § 15.

10. Fines and forfeitures imposed by chapter eighteen of General Statutes, except in cases otherwise provided for, may be recovered by complaint or indictment to the use of the com- Fines and forfeitures.  
Ibid. 18, § 80.

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<sup>1</sup> Chap. 18 of the General Statutes, and all other laws relating to towns apply to cities so far as they are not inconsistent with the general or special provisions relating thereto; and cities are subject to the liabilities, and city councils have the powers of towns; the mayor and aldermen have the powers, and are subject to the liabilities of selectmen; and the city clerks, treasurers, and other city officers of corresponding town officers, if no other provisions are made in relation thereto. Gen. Stats. c. 19, § 2.

G. S. 18, § 80. monwealth, or by action of tort to the use of the town where the offence is committed.

Prosecutions under by-laws may be discontinued by order of board of aldermen, &c. Ibid. 172, § 20.

11. In all prosecutions before a police court or justice of the peace, under the by-laws of a city or town, the city solicitor, or other person appointed by the board of aldermen or selectmen of such city or town, may enter a *nolle prosequi*, or do any other matter or thing which may be done by a district attorney in criminal prosecutions.

Police court jurisdiction. Ibid. 3, § 7, cl. 21. 116, § 10. 120, § 40.

12. The police court of Boston has jurisdiction of all offences against the by-laws and ordinances of the city.

How fines, &c., shall be recovered and appropriated. 1817, 50, § 3. But see p. 299, § 50, *ante*.

13. By an act passed June 17, 1817, making certain provisions respecting weights and measures, "and for the more easy recovery of fines and penalties within the town of Boston," it was provided: That all fines, forfeitures, and penalties accruing within said Boston, under the said act, or for the breach of any by-law which was then in force, or which might thereafter be duly enacted and made, might be recovered by indictment, information, or complaint, in the name of the commonwealth, in any court competent to try the same; and that all fines so recovered and paid, should be appropriated to the uses for which the same were then by law ordered to be applied.<sup>1</sup>

#### ORDINANCE.<sup>2</sup>

Enacting style of city ordinances. Sept. 16, 1850.

SECTION 1. All the by-laws of the city shall be denominated ordinances, and the enacting style shall be, "Be it ordained by the aldermen and common council of the city of Boston, in city council assembled, as follows."

Ordinances to

SECT. 2. All ordinances of the city shall be recorded at

<sup>1</sup> This provision was not repealed by the incorporation of the city. The city charter did not annul the rights and privileges of the town of Boston. It only conferred on the then existing corporation a new name with additional powers. *Commonwealth v. Worcester*, 3 Pick. 474. A right of appeal was also reserved in this statute which is no longer applicable; different provisions having since been made upon the subject. For special provisions, as to public health, see *ante*, p. 299, § 50.

<sup>2</sup> An ordinance in relation to the ordinances and by-laws of the city, passed September 16, 1850, and December 28, 1854.

length by the city clerk in a book to be kept for that purpose, be examined, enrolled, and recorded. Sept. 16, 1850.  
 previous to which they shall be examined by a joint standing  
 committee of the city council on ordinances, who shall certify  
 on the backs of the originals that they are rightly and truly  
 enrolled.

SECT. 3. The ordinances of the city council, and the rules Ordinances and the orders of board of aldermen to be published. Ibid.  
 and regulations of the board of aldermen, shall be published  
 and promulgated by inserting the same two weeks successively  
 in the newspapers published in the city of Boston, wherein are  
 printed the laws of the commonwealth for the time being, and  
 in such other of the newspapers published and printed within  
 the city, as the city council may designate; but this and the This provision to be directory merely. Ibid.  
 second section are directory merely, and a failure to comply with  
 the same shall not affect the validity of any ordinance or of any  
 rules and regulations.

SECT. 4. All fines and penalties for the violation of any of Fines to inure to the use of the city, except, &c. Dec. 28, 1854.  
 the ordinances of the city council, or any of the rules and reg-  
 ulations of the board of aldermen, when recovered, shall inure  
 to the use of the city, and shall be paid into the city treasury,  
 except in those cases where it may be otherwise provided by  
 the acts of the legislature, or the ordinances of the city.

## OVERSEERS OF THE POOR.<sup>1</sup>

### STATUTES.

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|---|--|
| <ol style="list-style-type: none"> <li>1. Incorporation of the overseers of the poor.</li> <li>2. Moneys and estates given, devised, &amp;c., for the use of the poor, vested in said corporation. Proviso, that they shall not hold more than £60,000.</li> <li>3. Shall have perpetual succession.</li> </ol> | <ol style="list-style-type: none"> <li>May hold real estate not exceeding £500 by the year.</li> <li>4. Shall have a common seal, and may make by-laws, &amp;c.</li> <li>5. Instruments made and acts done shall be binding.</li> <li>6. Incorporation of the Trustees of John Boylston's Charitable Donations.</li> </ol> |
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<sup>1</sup> The legislature has, by various acts, transferred a large portion of the powers and duties of the overseers of the poor of Boston which they formerly possessed, to the directors of the house of industry, and by the Act of 1857,

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|---|---|
| 7. Bequests, &c., made by John<br>Boylston, vested in said corpo-<br>ration.<br>8. Said corporation to have perpet-<br>ual succession, and to hold real<br>and personal estate.<br>9. Shall have a common seal, and<br>may make by-laws, &c.<br>10. Instruments and acts shall be<br>binding. | 11. Corporation authorized to bind<br>out poor persons, &c.<br>12. Power of surrendering indigent<br>boys to the Boston asylum for<br>indigent boys, shall be exercised<br>by the overseers of the poor.<br>13. Auditors to examine accounts of<br>overseers. |
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## STATUTES.

Incorporation  
of the overseers  
of the poor.

1. By an act passed April 25, 1772, after reciting in a preamble that many charitably-disposed persons have given and

c. 35,<sup>1</sup> these powers and duties are transferred to "the board of directors for public institutions," who now perform in Boston most of the duties imposed upon overseers of the poor in the various towns by the General Statutes. The overseers of the poor of Boston, in practice, furnish "out-door relief," and may send paupers to the house of industry. When received there, they come under the charge of the above-named directors. The overseers of the poor in the town of Boston were regularly incorporated for certain charitable purposes by the legislature in 1772, and it has been judicially held that the provision in the City Charter, relative to overseers of the poor, was a continuance of the corporation so created in 1772, and not a dissolution or suspension of it. *Overseers of the Poor of Boston v. Sears*, 22 Pick. 122, (1839).

The overseers of the poor, in their corporate capacity, continue to possess and exercise all the powers granted and are subject to all the duties enjoined by the several acts of May 25, 1772; 1802, c. 144; 1813, c. 171, which are seen in the text. See *House of Industry*, and *House of Reformation*, ante. For the general powers of overseers of the poor, see *Paupers*, post. p. 433.

They also, as trustees, hold invested on various trusts about \$130,000. Of this one half is a general fund the income of which is paid to elderly females. That portion of it called the Boylston Education Fund, now amounting to about thirty-two thousand dollars, is accumulating. The object for which it was left is the education of indigent orphans. Hon. Daniel Oliver, 1731; Margaret Blackader, 1755; John Scollay, 1760; Alice Quick, 1761; Anne Wheelright, 1764; Mary Ireland, 1770; Benjamin Pemberton, 1782; Martha Stevens, 1792; John Boylston, 1793; David Jeffries, 1795; Jonathan Mason, 1795; Samuel Dexter, 1812; — Driscoll, 1817; Samuel Eliot, 1820; William Breed, 1825; Mary Belknap, 1832, have made bequests to Boston in various amounts for different purposes, — and there is yet another fund steadily increasing, in the charge of the overseers. — *City Document*, 1861, No. 41.

<sup>1</sup> See the above named act *ante*, pp. 367-369, §§ 107-112.

bequeathed considerable sums of money and other interest and estate to the poor of the town of Boston, and their use, and many other persons were well inclined to make charitable donations to the same good purpose, but the overseers of the poor of the same town not being incorporated, the good intentions of those who had made, and those who inclined to make such charitable donations, had been either wholly frustrated or not carried into full effect it was enacted:—That the overseers, for the time being, of the poor of the town of Boston in the county of Suffolk and province of the Massachusetts Bay, be created, made, erected, and incorporated into a body politic by the name of the Overseers of the Poor of the Town of Boston in the Province of the Massachusetts Bay in New England, and that they and their successors in said office have perpetual succession by said name.

2. That all and singular sum and sums of money, interest, and estate, real or personal, of what name or nature soever heretofore given, or at any time hereafter to be given, granted, bequeathed, or devised by any way or means whatsoever to the poor of the town or to their use, not exceeding the sums and value in this act hereafter mentioned, be and the same hereby is and shall be to all intents and purposes vested in the same overseers, and their said successors in their said corporate capacity; and they are hereby enabled in the same capacity to receive, manage, lease, let, and dispose the same according to their best discretion, to and for the use and benefit of the poor of the said town; *provided, always*, that the said overseers shall not be able to receive or be capable of having or holding any moneys or personal estate of any kind or nature whatsoever, at any time above and beyond the sum and amount of sixty thousand pounds lawful money of this province, accounting and reckoning the whole moneys and value of all the personal estate, personal securities, and choses in action which they shall own or be vested withal in their corporate capacity together, and that all gifts and bequests of money or personal estate of any kind made to the said corporation, or which by the tenor of this act they might take or be vested with, shall be utterly void

1772, April 23  
and 25, § 1.  
22 Pick. 122.  
See p. 24, *ante*.

Money and  
estates given,  
devised, &c.,  
for the use of  
the poor,  
vested in said  
corporation.  
*Ibid.* § 2.

Proviso, that  
they shall not  
hold more than  
£ 60,000.  
*Ibid.* § 2.

1772, April 23  
and 25, § 2.

at all times hereafter when their whole stock in moneys, personal securities, or choses in action and personal estate which the said corporation shall have, own, and be vested with the property of, shall, taken reckoned together, amount to the said sum of sixty thousand pounds.

Shall have  
perpetual  
succession,  
Ibid. § 3.

May hold real  
estate not  
exceeding £ 500  
by the year.

3. That the said overseers and their successors in said office, by the name aforesaid, have a perpetual succession, by that name, to sue or be impleaded; by its said corporate name to purchase lands and hold them not exceeding the sum of five hundred pounds, lawful money, by the year, and to manage, lease, bargain, and sell, or otherwise dispose of all or any part thereof, and do all acts as natural persons may, as from time to time the said corporation shall judge best for the benefit, advantage, and use of said poor.

Shall have a  
common seal,  
and may make  
by-laws, &c.  
Ibid. § 4.

4. That the said corporation shall have a common seal and power, and said corporation is hereby authorized to make by-laws and private statutes and ordinances, not repugnant to the laws of the land, for the better government of the said corporation and its finances; to choose a treasurer, clerk, and other subordinate officers, as from time to time shall be found necessary, and all or any of them again at pleasure to displace.

Instruments  
made and acts  
done shall be  
binding.  
Ibid. § 5.

5. That all instruments which said corporation shall lawfully make by the name aforesaid and sealed with their common seal, and all acts done or matters passed upon by the consent of a major part of the said overseers for the time being, shall bind said corporation and be valid in law.

#### BOYLSTON'S CHARITABLE DONATIONS.

Incorporation  
of the Trustees  
of John Boyl-  
ston's Charita-  
ble Donations.  
1802, 44, § 1.

6. By an act passed February 3, 1803, it was enacted: That Oliver Wendell, William Cooper, Ebenezer Storer, and William Smith, all of Boston, and John Pitts, of Tyngsborough, in the country of Middlesex, Esquires, and the survivors and survivor of them, together with the overseers of the poor of the town of Boston, for the time being, and their successors, and after the decease of the said Oliver Wendell, William Cooper, Ebenezer Storer, William Smith, and John Pitts,

the said overseers of the poor of the town of Boston for the time being and their successors forever, are incorporated into a body politic, by the name and title of the Trustees of John Boylston's Charitable Donations for the benefit and support of aged poor persons, and of orphans and deserted children, and by that name and title shall have perpetual succession.

7. All the bequests,<sup>1</sup> devises, and donations made and granted by John Boylston, late of Bath, in the kingdom of Great Britain, deceased, for the purposes above mentioned, be and they hereby are vested in the said corporation, to be held and disposed of by them conformably to the directions of the said will. And the said corporation shall insert among their records a copy of this act, and also of all the clauses of the said last will and testament which have relation to the said two charitable donations for the benefit of aged poor persons, and for the support of orphans and deserted children; and in the management and disposal of the funds granted in said will, the said corporation shall conform to and be governed by the directions therein contained.

Bequests, &c.,  
made by John  
Boylston  
vested in said  
corporation.  
Ibid. § 2.

8. The said corporation shall have a perpetual succession by the name and title aforesaid, to sue or be impleaded; to purchase and hold lands, or other real estate, not exceeding the value of three thousand dollars, by the year; to hold personal estate not exceeding the value of sixty thousand dollars; and to manage, lease, bargain, and sell or otherwise dispose of, all or any part thereof, subject to the directions of the said will; and to do all acts as natural persons may do, as the said corporation from time to time shall judge best to carry into effect the charitable intentions of the said will; and the real or personal estate which the said corporation are hereby empowered to hold, shall not be considered as part of that which the overseers of the poor of the town of Boston are already empowered by their former act of incorporation to hold; but as altogether distinct and separate from the same.

Said corpora-  
tion to have  
perpetual  
succession, and  
to hold real and  
personal estate.  
Ibid. § 3.

9. The said corporation shall have a common seal, with

Shall have a

<sup>1</sup> See John Boylston's will, *Suffolk Probate Records*, vol. 94, p. 17.

common seal,  
and may make  
by-laws, &c.  
1802, 44, § 4.

power to break and alter the same; and said corporation is hereby authorized to make by-laws and private statutes and ordinances not repugnant to the laws of the land, for the better government of said corporation and its finances; to choose a treasurer, clerk, and other subordinate officers, as from time to time shall be found necessary, and all or any of them again at pleasure to displace.

Instruments  
and acts shall  
be binding.  
Ibid. § 5.

10. That all instruments which said corporation shall lawfully make by the name aforesaid, and sealed with their common seal, and all acts done or matters passed upon by the consent of a major part of the members of said corporation, shall bind the said corporation and be valid in law.

Corporation  
authorized to  
bind out poor  
persons,  
orphans, &c.  
1813, 171.

11. By an additional act, passed February 26, 1814, the last-mentioned corporation are authorized and empowered to bind out in virtuous families, or to reputable trades, or useful arts or occupations, such poor persons, orphans, or deserted children as receive, or may hereafter receive the benefit of the said Boylston's Charitable Donations, until they arrive at the age of twenty-one years, in such manner as to the said corporation may seem expedient; and for this purpose shall have authority to establish any rules and regulations, and enter into any indenture or covenant relative to such objects, not repugnant to the laws of this commonwealth, as the said corporation may deem necessary or expedient.

Power of  
surrendering  
indigent boys  
to the Boston  
asylum shall be  
exercised by  
the overseers of  
the poor.  
1823, 53.  
But see 1835, 28,  
§ 4.

12. The power recognized in the act to incorporate the Boston asylum for indigent boys, (1813, c. 153,) of the parent or guardian of any indigent boy or boys, to surrender in writing him or them to the managers of said asylum, for the purposes mentioned in said act, shall, in case said boy or boys have no parent or guardian within the city of Boston, nor legal settlement in any other town in this commonwealth, be possessed and exercised by the overseers of the poor of the city of Boston.<sup>1</sup>

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<sup>1</sup> The power referred to in the text is as follows: "They shall likewise have authority, at their discretion, to take into their asylum, such indigent boys belonging to the town of Boston, as they may judge to be suitable objects of charity, to enjoy the benefit of the institution; and also to accept a surrender in writing by the father, or where there is no father, by the mother or

13. A board of auditors was created by an act approved April 30, 1862, as follows : The mayor of the city of Boston, the chairman of the board of aldermen, the president of the common council, and the city treasurer, shall constitute a board of auditors, whose duty it shall be to examine all the accounts, acts, and doings of the overseers of the poor of said city, and shall annually, on or before the first Monday of September, make report to the city council of all such matters relating to all disbursements by said overseers, whether as Trustees of John Boylston's Charitable Donations, or otherwise, as they may deem the public good to require.

Board of auditors to examine accounts of overseers, 1862, 204.

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PAUPERS.

STATUTES. SUPPORT OF PAUPERS BY CITIES AND TOWNS.	
1. Towns to support poor.	6. May also assess for future expenses.
2. Powers and duties of overseers of the poor.	7. Costs, how taxed.
3. Same subject.	8. Court may order with whom pauper shall live.
4. Certain kindred to support, &c.	9. Proceedings on complaints.
5. Superior court may assess such kindred for past expenses.	10. Other kindred than those named may be summoned.
	11. Court may make new orders.
	12. Overseers to provide for immediate relief of strangers, &c.

guardian of any indigent boy as aforesaid, to the care and direction of said society, and to bind out in virtuous families, or to reputable trades or occupations, or to educate in such manner as they may deem beneficial, until the age of twenty-one years, any such indigent boy or boys, thus surrendered, or any such boys who being destitute of parents within this commonwealth shall have been relieved and supported by the society ; *provided*, that any parent whose child or children shall have received relief, or have been bound out as aforesaid, during the absence of such parent from this state shall have liberty on his or her return to the state, to receive and withdraw such child or children on paying to the treasurer of the society the expense incurred in his or their relief and support as aforesaid."

For enactments respecting the Boston Asylum and Farm School, see acts 1813, c. 153 ; 1823, c. 53 ; 1833, c. 135 ; 1835, c. 28 ; 1838, c. 16 ; 1854, c. 71.

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|--|--|
| <p>13. Recovery to establish settlement.</p> <p>14. Liability when the pauper is removed, &amp;c.</p> <p>15. Overseers shall support, and in case of decease bury, indigent strangers. Compensation therefor.</p> <p>16. Towns liable to individuals.</p> <p>17. Paupers may be removed, &amp;c.</p> <p>18. Process in cases of removals; if a removal is not made or objected to by the town notified, then, &amp;c.</p> <p>19. Effect of notifications, &amp;c., sent by mail.</p> <p>20. Penalty for leaving paupers where not settled, &amp;c.</p> <p>21. Overseers of poor may sell estate of deceased paupers, and apply proceeds to reimburse expenses.</p> <p>22. Overseers may prosecute, &amp;c.</p> <p>RETURNS TO BE MADE BY OVERSEERS OF THE POOR, ETC.</p> <p>23. Overseers, &amp;c., to return to secretary of commonwealth statement respecting paupers.</p> <p>24. Same subject. Penalty for not making returns.</p> <p>25. Secretary to furnish blanks annually.</p> <p>26. Penalty on directors, &amp;c., for not making returns.</p> <p>27. Secretary to prepare abstract of returns annually.</p> <p>28. Strangers, &amp;c., where inquests are held, burial of, by whom paid.</p> <p>29. Cities may send state paupers to state almshouses.</p> <p>30. May send sick state paupers to Rainsford Island.</p> <p>31. Lunatics, dangerous, not to be sent to state almshouses. Becoming furious, to be removed to state lunatic hospitals.</p> <p>32. Idiots having no known settlements may be sent to state almshouses.</p> <p>33. When almshouses are full, cities,</p> | <p>&amp;c., to take charge of state paupers at expense of state. Notice thereof.</p> <p>34. Cities, &amp;c., liable for support of their paupers in state almshouses.</p> <p>35. Husband and wife to be supported where she has a settlement.</p> <p>36. Expense to be paid by state.</p> <p>37. Discharged convicts may be removed from prison to state almshouses when no settlement is known.</p> <p>38. If settlement is ascertained, to be removed from almshouses to place of settlement, which place shall refund all expenses.</p> <p>39. No allowance for state paupers, except, &amp;c.</p> <p>40. Accounts of cities, &amp;c., against state, how audited, &amp;c.</p> <p>41. Paupers may be sent out of state, &amp;c.</p> <p>42. Foreign paupers may be sent where they belong by order of court.</p> <p>43. State lunatic paupers may be sent where they belong.</p> <p>44. Overseers to perform duties of superintendent of alien passengers in certain cases.</p> <p>BASTARD CHILDREN.</p> <p>45. Who may complain if the woman refuses or neglects.</p> <p>46. Who may complain when the woman is in state almshouse, Rainsford, or Deer Island.</p> <p>47. Complaint not to be settled without consent of overseers of the poor or other persons.</p> <p>48. Settlement made by mother and father not to relieve the father from his liability to city, &amp;c.</p> <p>49. Party charged as the father of child and committed to jail, may take poor debtor's oath.</p> <p>50. Mother, city, &amp;c., to have remedy against father after taking oath.</p> |
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51. Certain public officers may compromise prosecutions.  
Other provisions of law, *note*.
- COMMITMENT, SUPPORT, DISCHARGE,  
ETC., OF INSANE IN LUNATIC STATE  
HOSPITALS.
52. Insane persons, how committed.  
Certificate and statement to be  
filed, *note*.
53. Notice to be given to mayor.
54. Cases how and where heard by  
court.
55. Fees of officers.
56. Pauper, insane, may be sent to  
hospital by overseers of the poor.
57. Expense of persons having known  
settlements, by whom paid.
58. Expense of those having no  
known settlements, by whom paid.
59. How harmless incurable insane  
may be discharged.
60. After discharge and removal may  
be recommitted.
61. How other insane or idiots may  
be discharged or removed.
62. Same subject, and *note*.
63. Expense of clothing, burial, &c.,  
by whom paid.
64. Remedy of towns for expense of  
lunatics committed to hospitals.
- APPRENTICES AND SERVANTS.
65. Minors may be bound as appren-  
tices or servants.
66. How bound when under fourteen  
years.
67. When above fourteen.
68. Overseers of poor may bind.
69. Until what age and upon what  
terms.
70. Indenture to be of two parts, &c.
71. One part to be kept for minor.
72. Money, &c., to be for use of  
apprentice.
73. Parents, selectmen, &c., to in-  
quire into treatment of children.
74. Complaint for misconduct of  
master or servant may be filed  
in superior court, &c.
75. Court may discharge apprentice,  
&c.
76. May award costs.
77. Master liable to action on in-  
denture.
78. By whom action may be brought.
79. Proceedings therein when brought  
by overseers.
80. Limitation of action by appren-  
tice.
81. If judgment for plaintiff, court  
may discharge apprentice.
82. Apprentice absconding may be  
arrested, &c.
83. Proceedings in such case.
84. Costs therein, of whom recov-  
erable.
85. Apprenticeship discharged by  
death of master.
86. Mistresses.
87. Common-law right.
88. Powers and duties, in whom  
vested in cities.
- SETTLEMENT OF PAUPERS.
89. Settlements, how acquired :
  1. By married women.
  2. By legitimate children.
  3. By illegitimate children.
  4. By living on freehold estate,  
&c.
  5. By being assessed five suc-  
cessive years, &c.
  6. By serving one year in cer-  
tain town offices.
  7. By settled and ordained min-  
isters.
  8. By persons admitted inhab-  
itants by vote.
  9. By incorporation of an unin-  
corporated place.
  10. Where to be upon division or  
incorporation of town.
  11. Acquired by serving appren-  
ticeship four years, &c.
  12. By residence and paying  
taxes.
90. Provision for persons who have  
begun to acquire settlements.
91. Settlements to continue until, &c.

## STATUTES.

Towns to  
support poor.  
G. S. 70, § 1.  
9 Met. 495.

1. Every city and town shall relieve and support all poor and indigent persons lawfully settled therein, whenever they stand in need thereof.

Powers and  
duties of over-  
seers of the  
poor.  
G. S. 70, § 2.  
1 Pick. 123.  
29 Maine, 313.  
7 N. H. 298.

2. The overseers of the poor shall have the care and oversight of all such poor and indigent persons so long as they remain at the charge of their respective cities or towns, and shall see that they are suitably relieved, supported, and employed, either in the workhouse or almshouse, or in such other manner as the city or town directs, or otherwise at the discretion of said overseers. They may remove to the almshouse such children as are suffering destitution from extreme neglect of dissolute or intemperate parents or guardians.

Same subject.  
G. S. 70, § 3.

3. The overseers of the poor shall have the same power and authority over persons placed under their care, which directors or masters of workhouses have over persons committed thereto.

Certain kindred  
to support, &c.  
Ibid. § 4.  
10 Cush. 239.

4. The kindred of such poor persons, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living in this state and of sufficient ability, shall be bound to support such paupers, in proportion to their respective ability.

Superior court  
may assess  
kindred for past  
expenses.  
G. S. 70, § 5.  
10 Cush. 239.  
11 Cush. 24.

5. The superior court in the county where any one of such kindred to be charged resides, upon complaint of any city, town, or kindred who shall have been at expense for the relief and support of such pauper, may, on due hearing, assess and apportion upon such of the kindred as they shall find to be of sufficient ability, and, in proportion thereto, such sum as they shall deem reasonable for or towards the support of the pauper to the time of such assessment; and may enforce payment thereof by execution in common form; *provided*, that such assessment shall not extend to any expense for relief afforded more than six months previous to the filing of the complaint.

May also assess  
for future  
expenses.  
G. S. 70, § 6.

6. The court may further assess and apportion upon said kindred such weekly sum as they shall deem sufficient for the future support of the pauper, to be paid quarter-yearly until the further order of court; and upon application from time to time

of the city, town, or kindred to whom the same is ordered to be paid, the clerk of said court shall issue and may renew an execution for the arrears of any preceding quarter. G. S. 70, § 6.

7. When the court adjudges two or more of the kindred of a pauper to be of sufficient ability to contribute to his support they shall tax no more costs against any one respondent than is occasioned by his default or separate defence. Costs, how taxed. Ibid. § 7.

8. The court may further order with whom of such kindred, that may desire it, such pauper shall live and be relieved, and such time with one, and such time with another, as they shall deem proper, having regard to the comfort of the pauper as well as the convenience of the kindred. Court may order with whom pauper shall live. Ibid. § 8.

9. The complaint made as provided in section five, shall be filed in the clerk's office, and a summons shall be thereupon issued requiring the kindred therein named to appear and answer thereto; which summons shall be directed to any officer qualified to serve civil process between the parties, and served like an original summons, fourteen days at least before the sitting of the court to which it is returnable. Proceedings on complaints. Ibid. § 9.

10. Upon suggestion that there are other kindred of ability, not summoned in the original process, they may be summoned, and after due notice, whether they appear or are defaulted, the court may proceed against them in the same manner as if they had been summoned upon the original complaint. Other kindred than those named may be summoned. Ibid. § 10.

11. The court may take further order from time to time in the premises, upon application of any party interested, and may alter such assessment and apportionment according to circumstances; and upon all such complaints they may award costs to either party as justice requires. Court may make new orders. Ibid. § 11.

12. Said overseers, in their respective places, shall provide for the immediate comfort and relief of all persons residing or found therein, having lawful settlements in other places, when they fall into distress and stand in need of immediate relief, and until they are removed to the places of their lawful settlements; the expenses whereof, incurred within three months next before notice given to the place to be charged, as also of their removal, or burial in case of their decease, may be recovered by the place Overseers may provide for immediate relief of strangers, &c. Ibid. § 12. 2 Pick. 341. 13 Met. 192. 2 Allen, 23.

G. S. 70, § 12. incurring the same against the place liable therefor, in an action at law, to be instituted within two years after the cause of action arises, but not otherwise.<sup>1</sup>

Recovery to  
establish  
settlement,  
Ibid. § 13.

13. A recovery in such action shall bar the place against which it shall be had from disputing the settlement of such pauper with the place so recovering, in any future action brought for his support.

Liability when  
pauper is  
removed, &c.  
Ibid. § 14.  
4 Pick. 45.  
7 Pick. 155.  
21 Pick. 349.  
13 Met. 198.  
8 Cush. 371.

14. When a person is supported in a place other than that in which he has his settlement, the place liable for his support shall not be required to pay therefor more than at the rate of one dollar a week; *provided*, that the place so liable shall cause the pauper to be removed within thirty days from the time of receiving legal notice that such support has been furnished.

Overseers shall  
support, and in  
case of decease  
bury indigent  
strangers.  
Compensation  
therefor.  
G. S. 70, § 15.

15. The overseers of the poor of each place shall also relieve, support, and employ all poor persons residing or found therein, having no lawful settlements within this state, until their removal to a state almshouse, and in case of their decease shall decently bury them; the expense whereof may be recovered of their kindred, if they have any chargeable by law for their support in the manner hereinbefore provided; and if in case of their burial the expense thereof is not paid by such kindred, there shall be paid from the treasury of the commonwealth, five dollars for the funeral expenses of each pauper over twelve years of age, and two dollars and fifty cents for the funeral expenses of each pauper under that age.<sup>2</sup>

<sup>1</sup> In addition to the statute remedy, it has been settled by the supreme court, that when the overseers of the poor relieve the wants of the wife whose husband has a legal settlement in another town, an account lies at common law for the town whose overseers furnished the relief, against the husband, notwithstanding the statute remedy against the town wherein he is settled. *Inhabitants of Hanover v. Turner*, 14 Mass. 227, (1817.) See, also, *City of New Bedford v. Chace*, 5 Gray, 28, (1855,) and *Inhabitants of Monson v. Williams*, 6 Gray, 416, (1856).

<sup>2</sup> For the expense of burying persons who die in prisons, see *Houses of Correction and Jails*, ante, p. 354, § 59.

For the dispositions of the bodies of such persons dying in almshouses, &c., as are required to be buried at the public expense, see *Health*, ante, p. 301, §§ 61-64.

16. Every city and town shall be held to pay any expense necessarily incurred for the relief of a pauper therein by any person who is not liable by law for his support, after notice and request made to the overseers thereof, and until provision is made by them.

Towns liable to individuals.  
G. S. 70, § 16.  
7 Met. 216.  
9 Met. 492.  
4 Cush. 199.  
6 Cush. 399.

17. The overseers of any place may send a written notification, stating the facts relating to any person actually become chargeable thereto, to one or more of the overseers of the place where his settlement is supposed to be, and requesting them to remove him, which they may do by a written order directed to any person therein designated, who may execute the same.

Paupers may be removed, &c.  
G. S. 70, § 17.  
23 Pick. 156.  
4 Met. 433.  
13 Met. 199.  
8 Mass. 104.  
6 Mass. 501.  
5 Mass. 86.

18. If such removal is not effected by the last-mentioned overseers within two months after receiving the notice, they shall within said two months send to one or more of the overseers requesting such removal, a written answer, signed by one or more of them, stating therein their objections to the removal; and if they fail so to do, the overseers who requested the removal may cause the pauper to be removed to the place of his supposed settlement, by a written order directed to any person therein designated, who may execute the same; and the overseers of the place to which the pauper is so sent shall receive and provide for him; and such place shall be liable for the expenses of his support and removal, to be recovered in an action by the place incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action.

Process in case of removals.  
If a removal is not made or objected to by the town notified, then, &c.  
G. S. 70, § 18.  
23 Pick. 156.  
4 Mass. 180, 273.  
8 Mass. 104.

19. The notification and answer mentioned in the two preceding sections may be sent by mail; and such notification or answer, directed to the overseers of the poor of the place intended to be notified or answered, postage prepaid, shall be deemed a sufficient notice or answer, and shall be considered as delivered to the overseers to whom it is directed, at the time when it is received in the post-office of the place to which it is directed and in which the overseers reside.

Effect of notifications, &c.  
sent by mail.  
G. S. 70, § 19.

20. Whoever brings into and leaves any poor and indigent person in any place in this state, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such place with his relief or support, shall for-

Penalty for leaving paupers where not settled, &c.  
Ibid. § 20.  
2 Greenl. 5.  
16 Mass. 393.

G. S. 70, § 20.  
1 Pick. 465.  
21 Pick. 83.

Overseers of  
poor may sell  
estate of  
deceased pau-  
pers, and apply  
proceeds to  
reimburse  
expenses.  
G. S. 70, § 21.

feit a sum not exceeding one hundred dollars for each offence, to be recovered in an action of tort to the use of such place.

21. Upon the death of a pauper who at the time of his decease is actually chargeable to any place within this state, the overseers of the poor of such place may take possession of all his real and personal property; and if administration is not taken upon his estate within thirty days after his decease, the overseers may in their own names sell and convey so much thereof as may be necessary to repay the expenses incurred for the pauper. If any part of such property is withheld from said overseers, they may in their own name sue for and recover possession of the real estate, and shall have the same remedy for the recovery of the personal estate or its value, that an administrator might have in like case.

Overseers may  
prosecute, &c.  
Ibid. § 22.

22. In all actions and prosecutions founded on the preceding provisions of this chapter, the overseers of the poor of any place or any person by writing under their hands appointed shall appear, prosecute, or defend the same to final judgment and execution, in behalf of such place.

#### RETURNS TO BE MADE BY OVERSEERS OF THE POOR, ETC.

Overseers, &c.,  
to return to  
secretary of  
commonwealth  
statement  
respecting  
paupers.  
1862, 112, § 1.

23. The board of directors for public institutions in the city of Boston, and the overseers of the poor of the other several cities and towns in the commonwealth, shall, on or before the fifteenth day of October in each year, prepare and return to the secretary of the commonwealth, a statement, under oath, of the number and condition of the paupers in such city or town, as they were during the year ending on the last day of the month preceding; which return shall contain true and correct answers to the following inquiries, namely:—

- (1.) What number of persons have been relieved or supported by your town, within and out of the almshouse, during the whole or any part of the year ending September thirtieth?
- (2.) What number have received full support in your almshouse during the whole or any part of the year?
- (3.) What number, including children, have received full

support out of the almshouse, during the whole or any portion of the year? Pauper returns. 1862, 112, § 1.

(4.) How many persons have you aided, or assisted with partial support, out of the almshouse?

(5.) What was the number of inmates being fully supported in your almshouse September thirtieth?

(6.) How many persons were being fully supported out of the almshouse?

(7.) How many were receiving partial support out of the almshouse?

(8.) What has been the average number, weekly, during the year, supported in the almshouse?

(9.) What number of the inmates of your almshouse were unable to perform any labor?

(10.) How many supported or relieved in your town within and out of the almshouse, were insane?

(11.) How many insane persons have been supported by your town in the state lunatic hospitals?

(12.) How many have been supported in hospitals out of the state?

(13.) How many supported or relieved in your town within and out of the almshouse were idiots?

(14.) How many idiotic persons have been supported by your town in the Massachusetts school for idiotic and feeble-minded youth?

(15.) What number of all those supported and relieved were made dependent by intemperance in themselves?

(16.) What number by intemperance in those who ought to have been their supporters?

(17.) Of the whole number relieved and supported, how many had a legal settlement in your town?

(18.) How many were naturalized citizens (of foreign birth?)

(19.) How many were aliens, (not naturalized?)

(20.) How many were born in England and Ireland?

(21.) How many state paupers have you sent to the state almshouses?

(22.) Has your town an almshouse?

Pauper returns,  
1862, 112, § 1.

(23.) What number of acres of land is attached to your almshouse?

(24.) What is the estimated present value of your almshouse property?

1. Value of real estate?

2. Value of personal property?

(25.) What is the average weekly cost of fully supporting a pauper in the almshouse, not including in the estimate of said cost, interest on the value of almshouse, or the income of the farm?

(26.) What has been the average weekly cost of the full support of a pauper out of the almshouse?

(27.) What is the total net amount of expense of supporting and relieving the poor in your town, within and out of the almshouse, including interest on the cost of the establishment.

(28.) What is the estimated value of the labor performed by the poor in your almshouse?

(29.) What number of persons have been provided for under section twenty-five, chapter seventy-one, of the General Statutes?

Directors, &c.,  
to return state-  
ment of pauper  
children.  
Ibid. § 2.

24. The said directors and overseers shall, at the same time, prepare and return in manner aforesaid, correct statements of all children in such city or town under fourteen years of age who have been fully supported at the public charge during the whole or any part of the year, specifying therein the name, age, and sex of each.

Secretary to  
furnish blanks.  
Ibid. § 3.

25. The secretary of the commonwealth shall, in the month of September, annually furnish the said board of directors and overseers of the poor with blank forms of returns, which shall contain, in substance, the foregoing interrogatories and requirements.

Penalty for not  
making return.  
G. S. 70, § 24.  
1862, 112, § 4.

26. If the board of directors for public institutions of the city of Boston, or the overseers of the poor of any other city or town, refuse or neglect to make any of the returns as aforesaid, they shall forfeit a sum not less than fifty nor more than one hundred dollars for each offence; and the secretary of the commonwealth shall forthwith notify the district attorney of the district in which such directors or overseers reside, of such

refusal or neglect, and he shall immediately prosecute for the same. G. S. 70, § 24.

27. The secretary shall, as soon after the fifteenth day of October of each year as practicable, make out an abstract of the returns made to him, together with such explanatory remarks as he deems proper, and cause the same to be printed for the use of the legislature. Secretary to prepare abstract of returns. Ibid. § 25.

28. When a coroner takes an inquest upon the view of the dead body of a stranger, or being called for that purpose does not deem it necessary on view of such body that an inquest should be taken, he shall cause the body to be decently buried, unless its dissection has been allowed by lawful authority; and if the coroner certifies that, to the best of his knowledge and belief, the person found dead is a stranger not belonging to this state, the expenses of burial and of the inquisition, if any is taken, and other necessary expenses, with the coroner's fees, shall be paid from the state treasury. In all other cases the expenses of the burial shall be paid by the town or city where the body is found, and all other expenses by the county. Coroner, when to bury the body, &c. Costs, how paid. G. S. 175, § 14.

#### STATE ALMSHOUSES.

29. The several cities and towns may at their own expense send to the state almshouses, to be maintained at the public charge, all paupers who may fall into distress therein, not having a settlement within the commonwealth; that is to say, the cities and towns in the counties of Suffolk, Middlesex, and Essex, may send such persons to the state almshouse at Tewksbury; the cities and towns in the counties of Norfolk, Bristol, Plymouth, Barnstable, Nantucket, and Dukes County, to the state almshouse at Bridgewater; and the remaining cities and towns, to the state almshouse at Monson; *provided*, that the alien commissioners may direct the mayor of any city or the overseers of the poor of any town, to send such paupers to either of the state almshouses; and if any place is so directed to send a pauper to a greater distance than would be required by the preceding provisions of this section, the necessary additional expense shall be paid by the state. Cities and towns may send state paupers to state almshouses, &c. G. S. 71, § 36.

Commissioners  
may allow  
towns to send  
sick paupers to  
hospital.  
G. S. 71, § 30.

30. The board of alien commissioners<sup>1</sup> may allow any city or town in the state to send sick state paupers to the hospital at Rainsford Island, and such paupers, their kindred, and the places of their settlement, shall be subject to the same liability as if they had been sent to a state almshouse, to be enforced in like manner.

Not to send  
lunatics who  
are dangerous.  
Inmates becom-  
ing furiously  
mad may be  
sent to state  
lunatic hospi-  
tals.  
Ibid. § 37.

31. No city or town shall send to either almshouse any person who by reason of insanity would be dangerous if at large. And if an inmate of such establishment becomes so insane, the inspectors thereof may apply to the judge of a police court, or any two justices of the peace and of the quorum, in the county in which the institution is situated, who shall have the same power and authority in regard to such application and the commitment of such person to either of the state lunatic hospitals, as judges of probate courts have in regard to lunatics furiously mad; *provided*, that it shall not be necessary to give notice of such application to the officers of any place.

Idiots having  
no known  
settlement may  
be sent to state  
almshouse.  
Ibid. § 38.

32. When it is made to appear on application in writing to any two justices of the peace, one of whom shall be of the quorum, or to a police court, that any person having no known settlement in this state is idiotic and ought to be confined, said justices or court shall send such person to the nearest state almshouse, there to be supported, governed, and employed, in the same manner as persons sent thereto by overseers of the poor.

When all state  
almshouses are  
full, towns, &c.,  
to take charge  
of state paupers  
at expense of  
state.  
Notice thereof.  
Ibid. § 46.

33. When, by reason of all the state almshouses being full, a city or town is unable to obtain admission for a state pauper, such place shall take charge of the pauper until notified by the superintendent to whom application for admission has been made, that the pauper can be received. The superintendent shall give notice by mail when the pauper can be received, having regard in so doing to the priority of applications; and until notice is given, the city or town shall receive payment for the support of the pauper from the treasury of the commonwealth.

<sup>1</sup> On the first day of October, 1863, the powers now belonging to the board of alien commissioners and to the superintendent of alien passengers were transferred to the "Board of State Charities." See Act of 1863, c. 240.

34. If a pauper having a legal settlement in any place becomes an inmate of either of said almshouses, such place shall be liable to the commonwealth for the expense incurred for him, in like manner as one town is liable to another in like cases; and the same measures shall be adopted by the inspectors, in regard to notifying towns so liable, the removal of the pauper, and the recovery from towns of expenses incurred for him, as are prescribed for towns in like cases.

Towns liable for support of their paupers in state almshouses.  
G. S. 71, § 49.  
8 Gray, 455.

35. When the operation of any provisions of law in relation to poor and indigent persons might cause a separation of husband and wife, by reason of her having a legal settlement in some place in the commonwealth, he being a state pauper, both parties shall be supported at the place where she has a legal settlement.

Husband and wife not to be separated.  
1861, 94, § 1.

36. The expense of thus supporting the person who is such state pauper, shall be paid by the commonwealth, and the accounts therefor shall be audited and allowed by the inspectors of the state almshouse to which such pauper would otherwise belong, reference being had to the expense of supporting such person at the state almshouse, if there committed.

Expense to be paid by state.  
Ibid. § 2.  
But see § 40.

37. When a convict discharged from the state prison or any jail or house of correction, having no settlement in this state known to the warden, keeper, or master thereof, is at the time of his discharge incompetent, by reason of age, infirmity, or disease to support himself by labor, such warden, keeper, or master shall cause him to be removed to one of the state almshouses; the expense of which removal shall be certified to the auditor of the commonwealth, upon whose approval thereof the same shall be paid out of the treasury.<sup>1</sup>

Discharged convict paupers to be removed to almshouses in certain cases.  
G. S. 71, § 40.

38. If after such removal it appears to the inspectors of the almshouse to which such discharged convict is removed, that he has a legal settlement in this state, they shall cause him to be removed to the place of his legal settlement, which shall be liable to refund to the commonwealth all expenses incurred in behalf of such convict from the time of his discharge from the state prison, jail, or house of correction; to be recovered by a

When settlement is discovered in this state, such paupers to be removed to the place, &c.  
Ibid. § 41.

<sup>1</sup> Convicts too sick to be removed, are to be taken care of at the prisons until they are able to be sent to the state almshouse. See Gen. Stats. c. 71, § 42.

Allowance for  
state paupers.  
G. S. 71, § 56.

suit to be instituted by the attorney-general in the name of the commonwealth.

39. Nothing shall be allowed from the treasury of the commonwealth to any county, city, or town, for expenses incurred on account of any state pauper, except in cases expressly provided by law.

Accounts of  
counties, &c.,  
how audited,  
&c.  
Ibid. § 57.  
See § 36.

40. All accounts against the commonwealth for allowance to counties, cities, and towns on account of state paupers, shall be rendered to the board of alien commissioners<sup>1</sup> on or before the third Wednesday of January annually; and shall be so made as to include all claims for such charges up to the first day of said January, and if approved by said board, and certified by the auditor of accounts, shall be paid from the treasury of the commonwealth. The commissioners may require such accounts to be accompanied with such statement of particulars and facts, and substantiated by such affidavits as may seem to them proper.

Paupers may be  
sent out of  
state.  
1860, 83.

41. Any person having received a permit from the overseers of the poor of any city or town to become an inmate of any state almshouse or hospital, and expressing a preference to be sent to any state or place where said pauper may have a legal settlement, or friends willing to support him, the board of alien commissioners<sup>1</sup> shall have power to remove said pauper, previous to his committal to any state institution, if, in their judgment, the interest of the commonwealth and of the pauper will be promoted thereby; *provided*, that no person shall be so removed, unless, in the judgment of said overseers and commissioners, he will become a charge to the state for at least one year; and said commissioners shall return, in their annual report, the names of all persons removed under the provisions of this act, the places whence removed, and the cost of the several removals.

Foreign pau-  
pers may be  
carried where  
they belong.  
G. S. 71, § 52.

42. Any justice of the superior court, trial justice, or police court, upon complaint of the overseers of the poor of any place or of a superintendent of alien passengers, in term time or vacation, may by warrant directed to a constable or other person

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<sup>1</sup> By the Act of 1863, c. 240, the board of alien commissioners was abolished October 1, 1863, and all its powers and duties were transferred to a new board to be called the "Board of State Charities."

therein designated, cause any pauper not born, nor having a settlement, in this state who may conveniently be removed, to be conveyed, at the expense of the state, to any other state, or, if not a citizen of the United States, to any place beyond sea where he belongs.

43. Upon complaint of the trustees of any state lunatic hospital, the county commissioners of a county, the inspectors of a state pauper establishment, or the overseers of the poor of a place, a judge of the probate court shall have the same powers as are given by the preceding section, to cause the removal of state lunatic paupers under their charge to any other state, or beyond sea, where they belong.

State lunatic paupers may in same manner be sent home. Ibid. § 53.

44. The overseers of the poor in any place where there is no superintendent of alien passengers, or where such superintendent is unable to perform his duties by reason of absence or ill health, shall perform the duties and exercise the authority of superintendents; and shall in like manner render their accounts to the state treasurer, and pay over the money received, deducting therefrom a reasonable compensation for their services

Overseers of poor, when to perform duties of superintendent of alien passengers. Ibid. § 24.

#### BASTARD CHILDREN.

45. If a woman entitled to make a complaint refuses or neglects so to do when requested by an overseer of the poor of the place where she resides or has her settlement, or one of the alien commissioners,<sup>1</sup> the superintendent of a state almshouse or of the hospital at Rainsford Island, or a person authorized by either of them to make the request, or either of her parents, or her guardian, the person so requesting may make the complaint; and when already made, if she refuses or neglects to prosecute the same, either of said persons may prosecute the case to final judgment, for the benefit of the parent, guardian, city, town, or state. In such cases the bond shall be made to the party for whose benefit the complaint is made or prosecuted.

Who may complain, &c., if woman refuses. G. S. 72, § 2. 3 Allen, 477. 3 Allen, 481.

46. When a woman is an inmate of either of the state almshouses, a complaint by her or in her behalf may be made either

If woman is in state almshouse, com-

<sup>1</sup> See note on the preceding page.

plaint, where  
made.  
G. S. 72, § 3.

in the county where she then is, or where she last had her usual place of abode before becoming such inmate, and the warrant shall be returnable in the latter county or the county where the defendant resides. When a complaint is made in the county of Suffolk, by or in behalf of an inmate of the hospital at Rainsford Island or the house of industry at Deer Island, the warrant shall be returnable before the police court of the city of Boston.

Complaint not  
to be with-  
drawn, without  
consent, &c.  
Ibid. § 9.

47. No complaint shall be withdrawn, dismissed, or settled by agreement of the mother and the putative father, without the consent of the overseers of the poor of the city or town in which she has her settlement or residence, or of one of the other officers named in section forty-five, or of her parent or guardian, unless provision is made to the satisfaction of the court, to relieve and indemnify any parent, guardian, city, town, or the state, from all charges that have accrued or may accrue for the maintenance of the child, and for the costs of complaint and prosecution thereof..

Liability for  
support.  
Ibid. § 10.

48. No settlement made by the mother and father, before or after complaint is made, shall relieve the father from liability to any city or town, or the state, for the support of a bastard child.

Party charged  
as father may  
take poor  
debtor's oath.  
Ibid. § 11.  
3 Allen, 151.

49. Whoever has been imprisoned ninety days for having failed to comply with any order of the court, as provided in chapter seventy-two of the General Statutes, shall have the benefit of the laws for the relief of poor prisoners committed on execution; *provided*, that he procures like notification of his intention to take the oath prescribed to poor debtors, to be served upon the clerk of the city or town where the child of which he is the reputed father has its legal settlement, if there is such place in this state, and also upon the complainant, if living, thirty days at least before the time appointed for taking the oath.

Mother, &c., to  
have remedy,  
&c.  
G. S. 72, § 12.  
32 Maine, 21.

50. The mother of such child and said city or town, or the state respectively, may at all times after the liberation of such prisoner, or taking said oath, recover by action of contract any sum of money which ought to have been paid to them respectively by him, in pursuance of such order of court.

51. Public officers authorized to institute prosecutions and make complaints under the provisions of section forty-five, may with the consent of the mother or of her parent or guardian, compromise the same on receipt of a fixed sum or security for the payment thereof, for the benefit of the city, town, or commonwealth as the case may be, instead of prosecuting the same to final judgment.<sup>1</sup>

Public officers  
may compro-  
mise suits.  
1862, 213.

COMMITMENT, SUPPORT, DISCHARGE, ETC., OF INSANE IN  
STATE LUNATIC HOSPITALS.

52. Any of the judges of the supreme judicial, superior, and probate courts, and, in the city of Boston, of the police court, may commit to either of the state lunatic hospitals, any insane person who, in their opinion, is a proper subject for its treatment or custody. But in all cases, the evidence and certificate of at least two respectable physicians, shall be required to establish the fact of insanity. In all cases the judge shall certify in what place the lunatic resided at the time of his commitment; or if ordered to be confined by any court, the judge shall certify in what place the lunatic resided, at the time of the arrest in pursuance of which he was held to answer before such court; and such certificate shall, for the purposes of this act, be conclusive evidence of his residence.<sup>2</sup>

Insane person,  
how committed.  
1862, 223, § 3.

53. Any person applying for the commitment or for the admission of a lunatic to a state lunatic hospital, under the provisions of the Act of eighteen hundred and sixty-two, chapter two hundred and twenty-three, shall first give notice in writing to the mayor, or one or more of the selectmen, of the place where the lunatic resides, of his intention to make such application; and satisfactory evidence that such notice has been given shall be produced to the judge in cases of commitment, and to the trustees upon applications for admission.

Notice to the  
mayor, &c.  
Ibid. § 4.

<sup>1</sup> For further provisions of law relating to the maintenance of bastard children, see Gen. Stats. c. 72, and Act of 1863, c. 127.

<sup>2</sup> When application is made to a court for the commitment of an insane person to a hospital, there must be filed a certificate of two physicians, that the person is a fit subject to be committed to the hospital, and also a statement of other facts relating to said insane person. See *Lunatic Hospital*, ante, pp. 334, 335, §§ 15, 16.

Cases how and  
where heard by  
court.  
1862, 223, § 6.

A jury may be  
summoned.

Fees and ex-  
penses.

Fees of officers.  
Ibid. § 7.

Pauper insane  
may be sent to  
hospital by  
overseer of the  
poor.  
Ibid. § 9.

Expenses of  
support of per-  
sons having  
settlements.  
Ibid. § 10.

54. The judge may hear and determine such applications, in respect to persons alleged to be insane, at such times and places as he may appoint; and the presence of the alleged lunatic at the hearing may be required or dispensed with, in the discretion of the judge; and the court may, in its discretion, issue a warrant to the sheriff or his deputy, directing him to summon a jury of six lawful men, to hear and determine whether the alleged lunatic is insane. Whenever a jury is summoned, pursuant to the provisions of this section, the same proceedings shall be had and the same fees and expenses paid as are provided by the General Statutes, chapter seventy-three, sections twelve, thirteen, fourteen, fifteen, and sixteen.

55. Whenever application shall be made to any judge of probate for the commitment of an insane person under the provisions of the Act of eighteen hundred and sixty-two, chapter two hundred and twenty-three, he may allow to the sheriff, deputy-sheriff, or constable, or other person to whom a precept is directed by name, who may serve the same, the same fees as are allowed to officers upon the commitment of persons to prison, and such further sum for expenses incurred in said commitments, or in bringing such lunatic before the judge as to him may seem reasonable; and the sums so allowed shall be certified and paid, as provided in the General Statutes, chapter seventy-three, section sixteen.

56. Any insane person who is supported by any place as a pauper, may be committed by the overseers of the poor thereof to either of the state lunatic hospitals, with the consent of the trustees, and shall be kept for a sum not exceeding the actual expense of his support. And the trustees shall receive into the hospital, any other insane person having a settlement or residence in this commonwealth, for such compensation as they may determine.

57. The expenses of the state lunatic hospitals for the support of lunatics having known settlements in this state, shall be paid quarterly, either by the persons obligated to pay, or by the place in which such lunatics had their residence at the time of their commitment, unless other sufficient security is taken to the

satisfaction of the trustees for such support. If any place or person refuses to pay whatever sum may be charged and due according to the by-laws of the hospital, on account of the support of such patient therein, or for the removal of any patient whom the trustees are authorized by law to remove, for thirty days after the same has been demanded by the treasurer, in writing, of the mayor and aldermen of the city, or of the selectmen of the town, or of the person liable therefor, the same, with interest from the time of such demand, may be recovered for the use of the hospital in an action to be instituted by the district-attorneys, or other prosecuting officers, in the name of the treasurer, against such delinquent city, town, or person.

58. The expenses of the hospitals for the support of lunatics not having known settlements in this state, committed thereto, shall be paid quarterly by the commonwealth at the same rates charged for city and town pauper lunatics therein, but not to exceed the sum of two dollars and sixty-two cents per week; and the same may afterwards be recovered, by the treasurer of the commonwealth, of the lunatics themselves, if of sufficient ability to pay the same, or of any person or kindred obligated by law to maintain them, or of the place of their settlement if any such is ascertained; and the district-attorneys, or other prosecuting officers, shall institute suits therefor when requested.

Support of  
those having  
no known set-  
tlements.  
Ibid. § 11.

59. Any judge of the supreme judicial or superior court, at any term held within and for the county in which either hospital is located, or the judge of the probate court of such county or the trustees of such hospital may, on application in writing for the discharge from such hospital of any insane person who has remained there a sufficient time to make it appear that he is incurable and not dangerous to the peace and safety of the community, cause him to be delivered to the agents of any place in which he has a legal settlement or on which he has a legal claim for support, or to his friends, when it appears that it would not be to his injury, and that he would be comfortably and safely provided for by any parent, kindred, friend, master, or guardian, place or institution. When application has been made to any judge for the discharge of any insane person, any person inter-

How harmless  
incurable in-  
sane may be  
discharged.  
Ibid. § 14.

1862, 223, § 14. ested in said discharge may request a trial upon said application by a jury, and the judge before whom the trial is to be held shall issue a warrant to the sheriff of the county, or his deputy, directing him to summon a jury of six lawful men, to hear and determine whether such insane person is incurable, and may be comfortably and safely provided for according to the terms of this section. The proceedings shall be the same in selecting jurors, conducting the trial, and allowing the costs, as are provided in sections twelve, thirteen, fourteen, fifteen and sixteen of chapter seventy-three of the General Statutes.

Jury.

Summons,  
expenses, &c.

After removal,  
if not comfort-  
ably supported,  
&c., may be  
recommitted.  
G. S. 73, § 31.

60. If after the discharge of an incurable lunatic under the preceding section, it is made to appear on complaint by any person under oath to the judge of the probate court for the county in which the lunatic has his legal settlement or is placed, that he is not comfortably supported, or that the public safety is endangered by him, said judge shall order his recommitment to said hospital. And the same proceedings may be had in determining these questions by a jury, upon the request of any person interested therein made in writing to said judge, as are provided in the preceding section.

How other in-  
sane and idiots  
may be dis-  
charged or  
removed.  
Ibid. § 29.

61. Any two trustees of either hospital, or either of the justices of the supreme judicial court or superior court, at any term held within and for the county in which the hospital is located, may, on application in writing for that purpose, discharge from confinement, after the cause of such confinement has ceased, any lunatic committed thereto. The trustees may also remove any idiot or other patient to the place where the judge or court committing him shall certify that he resided, when in their opinion he ceases to be dangerous and is not susceptible of mental improvement by remedial treatment at the hospital, if such place shall not remove him after reasonable notice in writing from the trustees.

Same subject.  
1862, 223, § 15.

62. The several judges of probate in the counties where the state lunatic hospitals are located, shall have the same authority at any time to discharge<sup>1</sup> from confinement lunatics committed to

<sup>1</sup> When all the state lunatic hospitals are crowded, trustees may remove a certain class. See *Lunatic Hospital*, ante, p. 335, § 17.

the hospitals, as is conferred upon the trustees and the justices of the supreme judicial and superior courts by the preceding section. 1862, 223, § 15.

63. The money and cost of clothing which the trustees of any state lunatic hospital may by law furnish to discharged pauper lunatics, the expense of pursuing such as elope therefrom and of burial of pauper lunatics dying in the hospitals, shall be reimbursed to the trustees by the places of legal settlement of city and town paupers, and by the commonwealth in the case of state paupers. Expense of clothing, burial, &c. Ibid. § 16.

64. Every city and town paying expenses for the support or removal of a lunatic committed to either hospital, shall have like rights and remedies to recover the full amount thereof, with interest and cost, of the place of his settlement, as if such expenses had been incurred in the ordinary support of the lunatic; and the lunatic, if of sufficient ability to pay the same, and any kindred obligated by law to maintain him, shall be liable for all such expenses paid by any city or town in either case.<sup>1</sup> Remedy of towns for expenses of lunatics committed to hospitals. G. S. 73, § 25. 18 Pick. 379. 9 Cush. 555.

#### MASTERS, APPRENTICES, AND SERVANTS.

65. Children under the age of fourteen years may be bound as apprentices or servants until that age; and minors above the age of fourteen years may be bound as apprentices or servants, females to the age of eighteen years or to the time of their marriage within that age, and males to the age of twenty-one years. Minors may be bound as apprentices or servants. G. S. 111, § 1.

66. Children under the age of fourteen years may be bound by their father, or in case of his death or incompetency, by their mother or legal guardian. If illegitimate, they may be bound by their mother during the lifetime of the putative father as well as after his decease. If they have no parent competent to act, and no guardian, they may with the approbation of the selectmen How bound when under fourteen years. Ibid. § 2. 2 Mass. 109, 387, 433.

<sup>1</sup> The 8th, 9th, 10th, 11th, 19th, 20th, 21st, 22d, 23d, 24th, 27th, 28th, and 30th sections of the 73d, and the 15th section of the 171st, and the 17th section of the 172d chapter of the General Statutes, are repealed by Act of 1862, c. 223, in which other provisions relating to the insane are made.

G. S. 111, § 2. of the town where they reside, bind themselves. The power of a mother to bind her children shall cease upon her subsequent marriage, and shall not be exercised by herself or husband during the continuance of such marriage.

When above fourteen.  
Ibid. § 3.  
5 Cush. 417. 67. Minors above the age of fourteen years may be bound in the same manner, but when bound by their parent or guardian, the minor's consent shall be expressed in the indenture and testified by his signing the same.

Overseers of poor may bind.  
G. S. 111, § 4.  
7 Greenl. 457.  
4 N. H. 139.  
2 Pick. 451. 68. A minor child who is, or either of whose parents is, chargeable to a town as having a lawful settlement therein, or supported there at the expense of the state, may be bound as an apprentice or servant by the overseers of the poor.

At what age and upon what terms they may be bound.  
G. S. 111, § 5.  
5 Pick. 250. 69. Such children, whether under or above the age of fourteen years, may be so bound, females to the age of eighteen years or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching them to read, write, and cipher, and for such other instruction, benefit, and allowance, either within or at the end of the term, as the overseers may deem reasonable.

Indenture to be of two parts, &c.  
G. S. 111, § 6. 70. No minor shall be so bound unless by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the selectmen, they shall certify such approbation in writing upon each part of the indenture.

One part of indenture to be kept for minor.  
Ibid. § 7. 71. One part of the indenture shall be kept by the parent or guardian executing it, for the use of the minor; and when made with the approbation of the selectmen or by the overseers of the poor, shall be deposited with the town clerk, and safely kept in his office for the use of the minor.

Money, &c., to be for use of apprentice.  
Ibid. § 8. 72. All considerations of money or other things paid or allowed by the master upon a contract of service or apprenticeship made in pursuance of the seven preceding sections, shall be paid or secured to the sole use of the minor bound thereby.

Parents, overseers, &c., to inquire into treatment of children.  
Ibid. § 9. 73. Parents, guardians, selectmen, and overseers, shall inquire into the treatment of all children bound by them respectively or with their approbation, and of all bound by or with the approbation of the predecessors in office of any of them, and defend them from all cruelty, neglect, and breach of contract, on the part of masters.

74. Complaints by parents, guardians, selectmen, or overseers, for misconduct or neglect of the master, and by the master, for gross misbehavior, or refusal to do his duty, or wilful neglect thereof on the part of the apprentice or servant, may be filed in the superior court in the county where the master resides, setting forth the facts and circumstances of the case. The court shall order notice to the adverse party, and if the complaint is by the master, to all persons who have covenanted in behalf of the apprentice or servant, and to the selectmen who approved of the indenture, or their successors in office, and shall hear and determine the case with or without a jury, as the allegations of the parties may require.

Complaint for misconduct of master or servant may be filed in superior court, &c.  
G. S. 111, § 10.  
2 Pick. 451.

75. The court may render a judgment or decree, that the minor be discharged from his apprenticeship or service, or the master from his contract, and the minor thus discharged may be bound out anew.

Court may discharge apprentice, &c.  
G. S. 111, § 11.

76. Costs may be awarded to the prevailing party, and execution issued therefor; but no costs shall be awarded against selectmen or overseers, unless it appears that the complaint was made without just and reasonable cause. Costs in favor of the master may be recovered of the parent or guardian who executed the indenture, or if there is no parent or guardian liable therefor, such costs may be recovered in an action against the minor when he arrives at full age.

Court may award costs.  
Ibid. § 12.

77. Every master shall be liable to an action on the indenture for the breach of any covenant on his part therein contained. All damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and may be applied and appropriated to his use by the person who recovers the same, and the residue shall be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years, or at the time of her marriage within that age.

Master liable to action on indenture.  
Ibid. § 13.

78. Such action may be brought by the parent or his executors or administrators, the guardian, or any one who succeeds him in that trust, or the overseers or their successors in office; or it may be brought in the name of the minor by his guardian

By whom action may be brought.  
Ibid. § 14.

G. S. 111, § 14. or next friend, as the case requires; or by himself after the expiration of the term of apprenticeship or service.

Proceedings therein when brought by overseers.  
Ibid. § 15.

79. If the action is brought by the overseers, it shall not abate by the death of any of them, or by their being succeeded in office; but shall proceed in the names of the original plaintiffs, or the survivor of them, or the executors or administrators of the survivor; and the money recovered therein shall be deposited in the city or town treasury, to be applied and disposed of as provided in section seventy-seven.

Limitation of action by apprentice.  
Ibid. § 16.

80. No such action shall be maintained, unless commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

If judgment for plaintiff, court may discharge apprentice.  
Ibid. § 17.

81. If judgment in such action is rendered for the plaintiff, the court may upon motion of the plaintiff discharge the minor from his apprenticeship or service, if not already done as before provided, and the minor may be bound out anew.

Apprentice absconding may be arrested, and returned or imprisoned.  
Ibid. § 18.

82. If an apprentice or servant, bound as aforesaid, unlawfully departs from the service of his master, any police court or justice of the peace, upon complaint on oath made by the master or any one in his behalf, may issue a warrant to apprehend the apprentice or servant, and bring him before the court or justice. If the complaint is supported, the court or justice may order the offender to be returned to his master, or commit him to the jail or house of correction for a term not exceeding twenty days, unless sooner discharged by his master.

Proceedings in such case.  
Ibid. § 19.

83. The warrant when directed to an officer or other person by name, shall authorize him to convey the offender to the place of residence of the master in any county in the state.

Costs therein, of whom recoverable.  
Ibid. § 20.

84. All costs incurred in such process against a servant or apprentice, shall be paid in the first instance by the complainant. If the complaint is supported, the costs may be recovered by the master in an action on the indenture, if executed by a parent or guardian, and if recovered against a guardian, he may charge the amount paid by him in his guardianship account. If the indenture was executed by overseers of the poor, or the minor with the approbation of the selectmen, the costs may be recovered in an action against the minor after he arrives at full age.

85. No indenture of apprenticeship or service made in pursuance of this chapter shall bind the minor after the death of his master, but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew.

Apprenticeship discharged by death of master. G. S. 111, § 21.

86. All the foregoing provisions shall apply as well to mistresses as to masters.

Mistresses. Ibid. § 22.

87. Nothing contained in the preceding sections shall affect the father's right at common law to assign or contract for the services of his children during their minority.

Common-law right. Ibid. § 23. 3 B. & A. 586. 1 Ashm. 267. 1 Mason, 78. 7 Mass. 147. 8 Johns. 328.

88. Everything prescribed in preceding sections to be done by the selectmen of a town, shall and may be done by the mayor and aldermen of a city; and everything prescribed to be done by the overseers of the poor of a town, shall and may be done by the overseers of the poor of a city, or the directors of the house of industry, or such other officers as have charge of the poor therein.

Powers and duties, in whom invested in cities. G. S. 111, § 24.

#### SETTLEMENT OF PAUPERS.

89. Legal settlements may be acquired in any city or town, so as to oblige such place to relieve and support the persons acquiring the same in case they are poor and stand in need of relief, in the manner following, and not otherwise, namely:—

Settlements, how acquired. G. S. 69, § 1.

*First.* A married woman shall follow and have the settlement of her husband, if he has any within the state; otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage.

By married women. 9 Mass. 201. 12 Mass. 353. 1 Pick. 506.

*Second.* Legitimate children shall follow and have the settlement of their father if he has any within the state, until they gain a settlement of their own; but if he has none, they shall in like manner follow and have the settlement of their mother, if she has any.

By legitimate children. 18 Pick. 264. 8 Cush. 528.

*Third.* Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they may be born, if neither of their parents then has a settlement therein.

By illegitimate children. 13 Mass. 381. 8 Cush. 75.

By living on  
freehold estate.  
14 Mass. 384.  
2 Pick. 29.  
3 Met. 165.  
5 Met. 350.  
13 Met. 192.  
4 Cush. 172.  
8 Cush. 525.  
1 Gray, 619.

By being  
assessed.  
11 Mass. 327.  
15 Mass. 160, 253.  
22 Pick. 385.  
24 Pick. 166.  
3 Met. 428.  
4 Met. 178.  
5 Met. 350.  
4 Cush. 557.  
11 Cush. 292.  
2 Gray, 482.  
4 Gray, 283.  
4 Allen, 574.

By serving one  
year in town  
offices.  
12 Mass. 262.  
1 Pick. 129.

Settlement  
acquired by  
ministers.  
4 Cush. 553.

By persons  
admitted  
inhabitants  
by vote.

By incorpora-  
tion of an  
unincorporated  
place.  
6 Met. 484.

Where to be  
upon division  
or incorpora-  
tion of town.  
6 Met. 484.  
4 Cush. 185.  
4 Mass. 278, 452,  
676.  
16 Pick. 197.  
19 Pick. 426.

*Fourth.* Any person of the age of twenty-one years, being a citizen of this or any other of the United States, and having an estate of inheritance or freehold in any place within the state, and living on the same three years successively, shall thereby gain a settlement in such place.

*Fifth.* Any person of the age of twenty-one years, being a citizen of this or any other of the United States, and having an estate, the principal of which shall be set at two hundred dollars or the income at twelve dollars in the valuation of estates made by assessors, and being assessed for the same, to state, county, city, or town taxes, for five years successively in the place where he dwells and has his home, shall thereby gain a settlement therein.

*Sixth.* Any person being chosen and actually serving one whole year in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable, or collector of taxes, in any place shall thereby gain a settlement therein. For this purpose a year shall be considered as including the time between the choice of such officers at one annual meeting and the choice at the next annual meeting, whether more or less than a calendar year.

*Seventh.* Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the place wherein he is or may be settled as a minister.

*Eighth.* Any person admitted an inhabitant by any place at a legal meeting, held under a warrant containing an article for that purpose, shall thereby acquire a legal settlement therein.

*Ninth.* Any citizen of this or any other of the United States, dwelling and having his home in any unincorporated place at the time it is incorporated into a town, shall thereby acquire a legal settlement therein.

*Tenth.* Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of such division and not having acquired a legal settlement elsewhere, shall have his legal settlement in that place wherein his last dwelling-place or home happens to fall upon such division; and when a new city or town is incorporated, composed of a

part of one or more incorporated places, every person legally settled in the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, shall thereby acquire a legal settlement in such new place; *provided*, that no person residing in that part of a place which upon such division shall be incorporated into a new city or town, having then no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein, within the time and by the means by which he would have gained it there if no such division had been made.

*Eleventh.* A minor who serves an apprenticeship to a lawful trade for the space of four years in any place, and actually sets up such trade therein within one year after the expiration of said term, being then twenty-one years old, and continues there to carry on the same for five years, shall thereby gain a settlement in such place; but being hired as a journeyman shall not be considered as setting up a trade.

*Twelfth.* Any person of the age of twenty-one years, being a citizen of this or any other of the United States, who resides in any place within this state for ten years together, and pays all state, county, city, or town taxes, duly assessed on his poll or estate for any five years within said time, shall thereby gain a settlement in such place.

90. No person who had begun to acquire a settlement by the laws in force at and before the time<sup>1</sup> when the preceding section took effect, in any of the ways in which any time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions of the preceding section; but he shall acquire a settlement by a continuance or succession of the same residence or other act in the same time and manner as if the former laws had continued in force.

91. Every legal settlement shall continue till it is lost or

By serving apprenticeship four years, &c.

By residence and paying taxes.  
5 Mass. 430.  
10 Mass. 394.  
2 Pick. 535.  
3 Met. 428.  
10 Met. 115.  
12 Met. 35.  
4 Cush. 190, 557.

Provisions for persons who have begun to acquire settlements.  
G. S. 69, § 2.

<sup>1</sup> June 1, 1860, when the General Statutes began to be in force.

continue until, &c.  
G. S. 69, § 3.  
11 Mass. 441.  
6 Cush. 61.

defeated by acquiring a new one within this state, and upon acquiring such new settlement all former settlements shall be defeated and lost.

## PAWNBROKERS.

## STATUTES.

1. Pawnbrokers to be licensed by board of aldermen, &c.
2. Form of license.
3. Penalty for carrying on business without a license.

## ORDINANCE.

1. No person shall carry on the business of a pawnbroker without license.

2. He shall keep a record of his transactions.
3. He shall not receive pawns from any minor, &c. Shall exhibit all articles when requested by mayor or others.
4. License shall designate place of business, &c.
5. Penalty for offending against provisions of the ordinance.

## STATUTES.

Pawnbrokers to be licensed.  
G. S. 88, § 28.

1. The mayor and aldermen or selectmen of any city or town, which has adopted by-laws therefor, may license suitable persons to carry on the business of pawnbrokers, within their respective cities and towns.

Form of license, &c.  
Ibid. § 29.

2. The license shall designate the place where the business is to be carried on, contain such conditions and restrictions as may be prescribed by such by-laws, and continue in force one year unless sooner revoked.

Penalty for carrying on business without license, &c.  
Ibid. § 30.

3. Whoever not being licensed carries on such business, or is concerned therein within such city or town, or being licensed carries on such business, or is concerned therein in any other place or manner than that designated in his license, or after notice to him that his license is revoked, shall pay a fine not exceeding fifty dollars for each offence.

ORDINANCE.<sup>1</sup>

SECTION 1. No person shall carry on the business of a pawnbroker in this city unless he is duly licensed therefor by the board of aldermen.

Pawnbrokers to be licensed.  
Aug. 12, 1862.

SECT. 2. Every person carrying on said business shall keep a book, in which he shall record, at the time of receiving any article as a pawn, a description of the article so received, the name, age, and residence of the person from whom, and the day and hour when, he so received it; and that book shall at all times be open to the inspection of the mayor or either of the aldermen, or of any person by the board of aldermen authorized to make such examination.

He shall keep a record of his transactions.  
Ibid.

SECT. 3. No pawnbroker shall, directly or indirectly, receive any article in pawn of any minor or apprentice, knowing or having reason to believe him to be such. All articles taken or held by any pawnbroker shall be exhibited to the mayor, or either of the aldermen, or to any person authorized by the board of aldermen to make such examination, whenever a demand shall be made by either of them for such exhibition.

Shall not receive any article in pawn from minors, &c.  
Shall exhibit all articles.  
Ibid.

SECT. 4. All licenses granted under this ordinance shall designate the place where the person licensed may carry on his business; and he shall not engage in or carry on his business under his license in any other place than the one so designated and all the provisions of this ordinance shall be incorporated into every license which shall be granted under it.

License shall designate place of business, &c.  
Ibid.

SECT. 5. Any person offending against either of the provisions of this ordinance shall forfeit a sum not exceeding fifty dollars for each offence.<sup>2</sup>

Penalty.  
Ibid.

<sup>1</sup> An ordinance concerning pawnbrokers, passed August 12, 1862.

<sup>2</sup> An ordinance relating to pawnbrokers, passed June 18, 1856, was repealed.

## POLICE.

## STATUTES.

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| <ol style="list-style-type: none"> <li>1. General Statute provisions relating to the police, and to watch and ward.</li> <li>2. Cities may establish and keep watch. Appointment and expenses.</li> <li>3. Duties and powers of watch.</li> <li>4. Clubs and badges.</li> <li>5. Aldermen, &amp;c., may order a watch where none is established, &amp;c.</li> <li>6. Persons liable to do watch and ward duty.</li> <li>7. Persons exempt from such duty.</li> <li>8. Penalty on those liable to such duty for neglect or refusal.</li> <li>9. Neglect or refusal to aid officers when called on, how punished.</li> <li>10. Penalty for falsely assuming to be a police officer.</li> <li>11. Penalty for aiding a prisoner in escaping from officer.</li> <li>12. Special statute provisions for Boston.</li> <li>13. Appointment of police officers; their powers and term of office.</li> <li>14. Watch and police departments may be united; organization and regulations.</li> <li>15. Powers and duties of chief of police, of subordinate officers of police, and of policemen.</li> <li>16. Powers and duties of board of aldermen over police officers and policemen.</li> <li>17. Powers, &amp;c., of the board of aldermen, under the Act of 1801, c. 26.</li> <li>18. Powers and duties of policemen under that Act.</li> </ol> | <ol style="list-style-type: none"> <li>19. Powers and duties of policemen, under Acts of 1796, c. 82, and 1801, c. 26. Badges of office.</li> <li>20. Expenses of watch, how raised, &amp;c.</li> <li>21. Board of aldermen may establish a watch within the city, at such hour after sunset as they deem expedient.</li> </ol> |
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## ORDINANCE.

1. Police department, of whom to consist. Appointment, rank, term of office, and powers and duties of officers and members of police.
2. Vacancies, when and how to be filled.
3. Police officers to be sworn.
4. Chief of police; his powers and duties.
5. Bond of chief of police.
6. Chief of police to keep records and make reports. Clerk of police department; appointment; to be sworn.
7. Compensation. Witness fees. Fines. Abatements.
8. Office of chief of police to be kept open.
9. Station houses to be always open to receive complaints. Police to enforce the laws, &c., and prosecute violations thereof.
10. Board of aldermen may make further rules and regulations.
11. Policemen detailed for night duty to do duty of watchmen.
12. Repeal of inconsistent ordinances.

## STATUTES.

General Statute, provisions relating to the

1. The general provisions of the statutes relating to the police, and to watch and ward, applicable to all cities, and

towns in the commonwealth, are contained in the ten following police, &c. sections.

2. A city or town may establish and keep a watch and determine the number and qualifications of the persons to be employed for that purpose. The mayor and aldermen or selectmen shall appoint a suitable person to be officer of the watch, and direct the manner in which watchmen shall be equipped. The expense of the watch shall be defrayed in like manner as other town charges.

Watch, cities, &c., may establish. G. S. 23, § 1. Appointment and expenses. Ibid.

3. The watch shall see that all disturbances and disorders are prevented and suppressed. During the night-time they may examine all persons abroad whom they have reason to suspect of any unlawful design, demand of them their business abroad and whither they are going; may disperse any assembly of three or more such persons, and enter any building for the purpose of suppressing a riot or breach of the peace therein. Persons so suspected and not giving a satisfactory account of themselves, persons so assembled and not dispersing when ordered, and persons making, aiding, or abetting in a riot or disturbance, may be arrested by the watch, and shall thereupon be safely kept, by imprisonment or otherwise, until the next morning, and then taken before a police court or some trial justice, to be examined and proceeded against.

Duties and powers of. Ibid. § 2.

4. Officers and members of the watch, when on duty, may carry a club of not more than eighteen inches in length; shall wear such badge of office as the mayor or selectmen direct, and shall walk the rounds in and about the streets, lanes, wharves, and principal inhabited parts of the city or town, to prevent danger by fire, and to see that good order is kept.

Badges and weapons of. Ibid. § 3.

5. The mayor and aldermen or selectmen of any place wherein no watch as above provided is established, may, from time to time, order a suitable watch to be kept in their place, and warn all persons liable to watch and ward duty to perform the same. They may direct the number of the watch, the places and hours for keeping the same, may order in writing any constable or officer of the watch to warn such watch, either by himself or by some person therefor by him appointed, and to see that all persons so warned attend and perform their duty.

Selectmen, &c., may order watch, &c., where none is established. Ibid. § 4.

Persons liable  
to watch and  
ward.  
G. S. 23, § 5.

6. Every male person of the age of eighteen years or upwards, being able of body, or having sufficient estate to hire a substitute, and not exempt, shall be liable to watch and ward in his city or town, and shall perform the duties, be subject to the liabilities, and have the powers of watchmen as the same are defined in this chapter.

Persons ex-  
empt.  
Ibid. § 6.

7. Justices of the peace, mayors, aldermen, selectmen, sheriffs, settled ministers of the gospel, and persons living more than two miles from the place where such watch and ward is kept, shall be exempt.

Penalty on per-  
sons liable, &c.,  
refusing, &c.  
Ibid. § 7.

8. Persons liable to watch and ward, and without reasonable excuse neglecting or refusing to appear and do duty personally or by sufficient substitute, and constables or officers or members of the watch refusing to execute and observe proper orders, shall forfeit ten dollars, to be recovered by complaint to the use of the commonwealth, or by action of tort to the use of the city or town.

Neglect or re-  
fusal to aid  
officers, how  
punished.  
G. S. 163, § 16.

9. Whoever being required in the name of the commonwealth, by a sheriff, deputy sheriff, coroner, constable, police officer, or watchman, neglects or refuses to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in a case of escape or rescue of persons arrested upon civil process, shall be punished by imprisonment in the jail not exceeding one month, or by fine not exceeding fifty dollars.

Falsely assum-  
ing to be an  
officer.  
Ibid. § 18.  
10 Cush. 61.

10. Whoever falsely assumes or pretends to be a justice of the peace, sheriff, deputy sheriff, coroner, constable, police officer, or watchman, and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of any such officer, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars.

Aiding prisoner  
to escape from  
officer, how  
punished.  
G. S. 163, § 12.

11. Whoever aids or assists a prisoner in escaping, or attempting to escape, from an officer or person who has the lawful custody of such prisoner, shall be punished by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars.

12. The following statute provisions relate specially to the city of Boston. Special statutes for Boston.

13. The mayor and aldermen of Boston may, from time to time, appoint such police officers for said city as they may judge necessary, with all or any of the powers of constables of said city, except the power of serving and executing any civil process; and the said police officers shall hold their offices during the pleasure of the mayor and aldermen.<sup>1</sup> Appointments of police officers. Their powers and duties. 1838, c. 123.

14. The city council of the city of Boston are hereby authorized and empowered to unite, by ordinance, the watch and police departments of the said city into one department, and to organize the same, and from time to time to establish regulations therefor, not repugnant to the laws of the commonwealth.<sup>2</sup> Watch and police united. 1863, 354, § 1.

15. The chief of the police, who may be authorized to act by virtue of such ordinance, shall have and exercise all the powers and duties which by the laws now in force may be had and exercised by the head constable of the watch of the city of Boston; and the deputy chiefs of the police, and captains and Powers and duties of chief of police and subordinate officers. Ibid. § 2.

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<sup>1</sup> The law does not require that a police officer of the city of Boston, appointed pursuant to Stat. 1838, c. 123, should be sworn to the faithful discharge of the duties of his office; and therefore a party indicted for assaulting such police officer, and obstructing him in the discharge of the duties of his office, cannot defend by showing that he had never been sworn. *Commonwealth v. Dugan*, 12 Met. 233.

L. was appointed by the mayor and aldermen of Boston, under Stat. 1838, c. 123, "a police officer (at the National Theatre) with the power of a constable, except the power of serving civil process." Held, that if L.'s power was limited to a part of the city, yet that it was not limited to the space within the walls of the theatre, but extended to the environs, so far as the special vigilance of an officer might be required to keep the peace and preserve order among persons frequenting the theatre, or carrying others to and from it, or supplying refreshments; and also to shops, stalls, and stands kept in the vicinity, for the purpose of supplying refreshments. *Commonwealth v. Hastings*, 9 Met. 257.

The Statute of 1852, c. 162, extended the provisions of this section to all the cities and towns in the commonwealth. Under that act the selectmen of a town appointed a person a police officer of the town, "to continue in said office until the next annual town meeting," and the appointment was held valid. *Commonwealth v. Higgins*, 4 Gray, 34.

<sup>2</sup> For rules and regulations for the police department, see *Supplement*.

1863, 354, § 2. lieutenants of the police, who may be authorized to act by virtue of such ordinance, shall have and exercise all the powers and duties which by the laws now in force may be had and exercised by the constables of the several divisions of the watch of the city of Boston; and the said officers, and the policemen, who shall be appointed under the provisions of such ordinance, shall have and exercise all the powers and duties which may be had and exercised either by the watch of the city of Boston, or by the police of the said city, by virtue of the seventeenth chapter of the Revised Statutes of this commonwealth and other existing laws.<sup>1</sup>

Duties, &c., of  
board of alder-  
men in relation  
thereto.  
Ibid. § 3.

16. The mayor and aldermen of the city of Boston shall have and exercise all the powers and duties in relation to the officers and policemen mentioned in section fifteen, which, by the laws now in force, they may have and exercise in relation to the watch and watchmen and the police of the city of Boston.<sup>2</sup>

Board of alder-  
men may ap-  
point watch-  
men.  
1801, 26, § 1.  
1821, 110, §§ 1, 13.  
1854, c. 448, § 33.

17. The Act of eighteen hundred and one, chapter twenty-six, authorized the selectmen of the town of Boston, (whose powers, by the thirty-third section of the City Charter, are transferred to the board of aldermen,) from time to time, to appoint such a number of the inhabitants, to be watchmen by night, in the town of Boston, as they should judge expedient; to be paid at the charge of that town; and the said selectmen were also further authorized, and empowered, from time to time, to appoint a head constable to superintend said watch, as also a constable for each division thereof; and the several constables of divisions were required to report every morning an account of their doings, and of the state of the town during the night, to the said head constable, in order that the same might be communicated to the chairman of the selectmen daily.

Powers and du-  
ties of police-  
men.

18. The head constable, the several constables of divisions, and the watchmen appointed by virtue of the said act, shall have

<sup>1</sup> The General Statutes, chapter twenty-third, contain the provisions of the seventeenth chapter of the Revised Statutes. They can be found, *ante*, pp. 463, 464, §§ 2-8.

<sup>2</sup> This act was passed May 21, 1853, and was to be void unless accepted by the city council of the city of Boston within sixty days after its passage. It was accepted by the city council June 2, 1853.

the same powers, and shall be held and obliged to perform the same duties, as are required of watchmen, by a law of this commonwealth, passed March the tenth, seventeen hundred and ninety-seven, entitled “An act for keeping watches and wards in towns, and for preventing disorders in streets and public places.”

19. The Act of seventeen hundred and ninety-six, chapter eighty-two, referred to in the preceding section,<sup>1</sup> gave the power to direct and order a suitable watch or watches to be kept nightly, from and after nine o'clock in the evening until sunrise in the morning; and also in the daytime and evenings, when it should be thought necessary. And the watch were to be charged “to see that all disturbances and disorders in the night be prevented and suppressed; and to examine all persons whom they shall see walking abroad in the night after ten o'clock, and whom they shall have reason to suspect of any unlawful intention or design, of their business abroad at such season, and whither they are going; and in case they give not reasonable satisfaction therein, then to secure, by imprisonment or otherwise, all such disorderly and suspicious persons, to be safely kept until morning; then to carry them before one of the next justices of the peace to be examined, and proceeded against, according to the nature of their offences, as is by law directed. And such watchmen shall walk the rounds in and about the streets, wharves, lanes, and principal inhabited parts within such town or district, to prevent any danger by fire, and to see that good order is kept, taking particular observation and inspection of all houses and families of evil fame, and shall strictly observe the charge to be given them as aforesaid. And each constable, when attending watch or ward, shall carry with him the usual

1801, 26, § 2.  
1796, 82, § 2.

Powers and duties of policemen.  
1796, 82, § 2.

To prevent and suppress disturbances and disorders, &c.  
Ibid.

To walk the rounds.  
Ibid.

To carry his badge of office.  
Ibid.

<sup>1</sup> Whether the provisions of the Act of 1796, c. 2, in relation to the powers and duties of watchmen, are still in force in Boston, by virtue of the Act of 1801, c. 26, § 2, or whether the provisions of the General Statutes, c. 23, are applicable to Boston, superseding the former enactments,—*quære*. The Act of 1796, c. 82, is among the general laws that were repealed by the Revised Statutes, and the act establishing the Revised Statutes is repealed by the General Statutes. The provisions of the General Statutes on this subject are given, *ante*, pp. 463, 464, §§ 2-8.

To carry quarter pike.  
1793, 82, § 4.

badge of his office." The same act also prescribed, that whenever a watch should be appointed and agreed upon different from a constable's watch, the person appointed officer of the watch, to take the charge and command of such watch, as the badge of his office, should carry a quarter pike, with a spire on the top thereof; and that every watchman, as well in this as in the constable's watch, should carry a staff with a bill fastened thereon, as was usual.

To carry staff.  
Ibid.

Expenses of, &c., how raised.  
1801, 26, § 3.  
1821, 110, § 1.

20. The expenses that may be incurred, by reason of the establishment of the watch aforesaid, shall be raised, levied, and collected, as the other expenses of said city are or may be raised, levied, or collected; any law to the contrary notwithstanding.

Board of aldermen may set the watch at such hour after sunset as they shall judge expedient.  
1833, 62.  
See p. 14, *ante*.

21. Whenever the board of aldermen of the city of Boston shall establish a watch within said city, in pursuance of the preceding provisions, the said board of aldermen may, and they are hereby authorized to set such watch, at such hour after sunset, as they shall judge expedient; and from and after such hour, the said watch shall and may exercise all the powers given in and by the several acts aforesaid; anything in the said acts to the contrary notwithstanding.

#### ORDINANCE.<sup>1</sup>

Police department to consist of whom.  
March 17, 1863.

SECTION 1. The police department shall consist of a chief of police, one or more deputy chiefs of police, eight captains of police, sixteen lieutenants of police, and such number of persons as and for members of the department of the police, as the board of aldermen, with the approval of the mayor, shall deem necessary, to be appointed by the mayor and aldermen, and to take rank in the order in which they are named; and they shall severally hold their offices until vacated by death or resignation, or until they shall be removed therefrom by the mayor; and they shall perform all the duties, and be subject to all the rules and regulations which now are, or may hereafter be prescribed

Appointment, rank, term of office, and powers and duties.  
Ibid.

<sup>1</sup> An ordinance on the police, passed December 23, 1862, and an ordinance in addition thereto, passed March 17, 1863.

by the ordinances of the city council, or the orders of the board of aldermen.<sup>1</sup> March 17, 1863.

SECT. 2. Upon the passage of this ordinance, and there- afterwards whenever there shall be a vacancy in any of the offices aforesaid, the mayor shall nominate to the board of aldermen for their confirmation or rejection, persons to fill the offices aforesaid; and in the event that the board of aldermen shall reject any nominations to them as aforesaid, then, and in every such case, the mayor shall make new nominations to fill the places so vacant, within two weeks after such rejection. Vacancies, when and how filled. Ibid.

SECT. 3. Before entering upon his duties, each officer so appointed and confirmed shall be sworn to the faithful discharge of the duties assigned him. Police officers to be sworn. Dec. 23, 1862.

SECT. 4. The chief of police shall be the head of the department of the Boston police, and shall have precedence and entire control of the department, its officers and members, and of all constables and other officers when engaged in the service of the city. He shall devote his whole time to the municipal affairs of the city of Boston, to preserve the peace, order, and cleanliness thereof, and to this end he shall execute and enforce the special laws relating to the city, the ordinances and orders of the city council, and the orders of the mayor and of the board of aldermen. He shall take notice of all nuisances, impediments, obstructions, and defects in the streets, lanes, alleys, courts, public places and squares of the city, and shall remove the same, or take all proper measures in relation thereto, according to the laws and ordinances under the direction of the board of aldermen. Chief of police, his powers and duties. Ibid.

SECT. 5. The chief of police shall, before entering upon the duties of his office, give to the treasurer of the city of Boston a bond in the sum of five thousand dollars, with sufficient sureties, in a like sum, for the faithful performance of the duties of his office. Bond of chief of police. Ibid.

SECT. 6. The chief of police shall keep full and complete records of the business of the department, and for that purpose shall nominate, in the month of February or March, annually, Chief of police to keep records. Ibid.

<sup>1</sup> For rules and regulations, see *Supplement*.

Clerk. Dec. 23, 1862.	to the mayor, a clerk of the department, which nomination shall be sent to the board of aldermen for confirmation, and if approved by them, the person so nominated and confirmed shall, before entering upon the duties assigned him, be sworn to the faithful discharge of his duties, and the chief of police shall, as often as once in three months, and at all times when specially required, make a report of the doings of his department.
Oath. Chief of police to make reports. Ibid.	
Compensation witness fee. Ibid.	SECT. 7. The chief of police and the other officers, clerk and members of the department, shall receive such compensation as the city council may from time to time determine. They shall account to the city treasurer for all fees received as witnesses on complaints or prosecutions, and in cases in which the city is a party, but when summoned and in attendance as witnesses for the government in the county of Suffolk before the grand jury or in the superior court for the transaction of criminal business, they may, when off duty, receive for their own use and without accounting to the city treasurer therefor, one attendance fee a day, and no more; and from their stated compensations shall be deducted all fines or abatements incurred for disobedience of the rules and regulations made for the government of the department as shall be therein provided.
Fines, abatements. Ibid.	
Office of chief of police to be kept open. Ibid.	SECT. 8. The office of chief of police shall be open at all suitable times, under the direction of the board of aldermen, for the purpose of receiving complaints of the inhabitants respecting offences against the laws and ordinances.
Station houses to be always open, &c. Ibid.	SECT. 9. The several station houses of the police shall be open at all hours of the day and night for the purpose of receiving complaints from the inhabitants respecting offences against the laws of the commonwealth and ordinances of the city, and the chief of police and the deputy chiefs of police shall cause proceedings to be instituted for the prosecution of violations of the laws and ordinances and attend to the trial of the same, and each member of the department shall devote his entire time to the municipal affairs of the city, the preservation of order, and the maintenance of the peace thereof; and they shall enforce the laws of the commonwealth, the special laws and ordinances of the city of Boston, and discharge such other duties as, by special orders, they may be required to perform.
Police to prosecute violations of law. Ibid.	
To enforce the laws, &c. Ibid.	

SECT. 10. The board of aldermen may make from time to time such further rules and regulations for the government, disposition, and management of the Boston police, as they may deem expedient; *provided*, such rules and regulations are not inconsistent with the laws of this commonwealth, or laws and ordinances of the city of Boston.

Board of aldermen may make further rules and regulations. Dec. 23, 1862.

SECT. 11. All the duties heretofore required by the laws of the commonwealth, or the laws and ordinances of the city of Boston, or orders of the mayor or board of aldermen, to be performed by watchmen, shall be performed by the policemen who are detailed for night duty.

Policemen on night duty to do duty of watchmen. Ibid.

SECT. 12. The ordinance in relation to the police department, passed May nineteenth, eighteen hundred and fifty-five, and all ordinances and parts of ordinances inconsistent with this ordinance, are hereby repealed.

Repeal of inconsistent ordinances. Ibid. March 17, 1863.

## PORTERS.

### STATUTES.

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| <p>1. Selectmen (board of aldermen) to appoint porters. To regulate their wages. Porters to wear badges.</p> <p>2. Penalty for persons unlicensed acting as porters.</p> | <p>3. Penalties for asking more than selectmen allow for services, or for appearing without a badge.</p> <p>4. Security to be given by porters. They may be removed for disorderly conduct.</p> |
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### STATUTES.

1. An act for the better regulating porters employed within the town of Boston,<sup>1</sup> passed in seventeen hundred and forty-one, and originally to continue for seven years, and no longer, but made perpetual, March the seventh, seventeen hundred and ninety-seven, provided,—

Selectmen (board of aldermen) to appoint porters. 1741, § 1. 1796, 69.

<sup>1</sup> The preamble of this act was as follows:—

“Whereas, the trade and business managed in the town of Boston, between the inhabitants thereof and others trafficking there, occasions many persons to resort to and attend about the wharves, docks, and other parts of the town, to convey and carry goods, wares, and merchandises from place to place, some

1741, § 1.

To regulate  
their wages.Porters to wear  
badges.  
Ibid.Penalty for per-  
sons unlicensed  
acting as por-  
ters.  
Ibid. § 2.Penalty for ask-  
ing more than  
selectmen allow  
for services.

That the selectmen<sup>1</sup> of the town of Boston, for the time being, shall have full power and authority to order what number and who shall be employed, and take upon them the business of carrying goods, wares, and merchandises, for pay or wages, as common porters within the said town; and what rate or price such persons shall ask, receive, and take for their labor, service, and attendance according to the distance of place or other circumstances, the selectmen shall order and ascertain; all which persons, so admitted by the selectmen, shall at all times when in the service or doing the business of porters, wear a badge or ticket, with the figure of a pine-tree marked thereon, on some part of his upper garment or girdle; which badge or ticket shall be numbered, and a fair entry of each porter's ticket made in the selectmen's books, as also the wages they are to ask and receive, within ten days after the approbation of the selectmen as aforesaid.

2. That whosoever shall presume to take up the business and employ of a common porter, and convey or carry goods and merchandise from place to place, within the town of Boston, for hire or wages, without being admitted by the selectmen as aforesaid, shall forfeit and pay the sum of twenty shillings for every time he shall be convicted thereof, before any one of his majesty's justices of the peace, within the county of Suffolk, at Boston aforesaid; the one half of which fine or forfeiture should be disposed of to and for the use of the poor of the town of Boston, the other one half to him or them that shall inform and sue for the same.

3. That whosoever, being admitted as a porter as aforesaid, shall ask, take, and receive any more than what the selectmen shall allow for any work or service, shall for every such exac-

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of whom are not so well known as such an employment requires, others of no good character, yet oftentimes have goods of a considerable value put into their custody for conveyance as aforesaid, and some taking upon them the business of porter, impose upon those making use of them, more especially strangers, by exacting exorbitant wages for their labor, or refusing business, though not before employed, if they cannot have their unreasonable demands: Therefore, to avoid such inconveniences for the future, Be it enacted," &c.

<sup>1</sup> By the *City Charter*, see *ante*, p. 14, § 33, the powers previously vested in the selectmen are vested in the board of aldermen.

tion forfeit and pay the sum of twenty shillings, to be recovered <sup>1741, § 3.</sup> and disposed of as hereinbefore directed; and if any person admitted and approved of as aforesaid, as a common porter, <sup>Penalty for appearing without a badge.</sup> shall officiate or concern himself in the business of transporting goods or merchandise, not having his badge or ticket, shall, for <sup>Ibid.</sup> every such breach of the said act forfeit and pay the sum of twenty shillings, to be recovered and disposed of as aforesaid.

4. That the selectmen shall require and take bond of each <sup>Security to be given by porters.</sup> one of the porters admitted as aforesaid, with sufficient surety, <sup>Ibid. § 4.</sup> in a sum not exceeding fifty pounds, for their orderly and faithful acting in the business; more especially their safe conveying and delivering such goods as shall be committed to them; and <sup>They may be removed for disorderly conduct.</sup> that upon complaint made to the selectmen that any whom they <sup>Ibid.</sup> may have admitted as aforesaid do not behave and conduct themselves orderly, peaceably, and quietly towards their employers, it being made to appear, the party accused being seasonably notified thereof, such person may be removed, and other meet and orderly person admitted in his room. <sup>See Charter, p. 14, § 33.</sup>

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## PRINTING.

### ORDINANCE.<sup>1</sup>

A joint standing committee on printing to be appointed.

There shall be appointed annually, in the month of January, <sup>A joint standing committee on printing to be appointed.</sup> a joint standing committee of the city council, to be called the committee on printing, consisting of one member of the board of aldermen, and two members of the common council, whose duty it shall be to contract for the city printing, to see that the work performed, and the materials provided, are in conformity with the terms of the contract; and to approve all bills for printing. <sup>Dec. 24, 1846.</sup>

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<sup>1</sup> An ordinance relating to printing, passed December 24, 1846.

## PUBLIC BUILDINGS.

## STATUTES.

1. City council to have care of public buildings and public property.
2. In county of Suffolk, public buildings to be provided by Boston.
3. Board of aldermen to provide for erecting and repairing county buildings.
4. Proceeding when public buildings are to be erected.
5. Injury to school-house, church, &c., how punished.
6. Same subject.

## ORDINANCE.

1. Committee on public buildings to be appointed.
2. To have care and custody of school-houses, and other city buildings, except, &c.
3. To lease buildings belonging to the city, subject, &c. Lease to be signed by mayor.
4. When a building is to be erected, &c., the committee shall prepare plans and specifications of the buildings to be erected.
5. Shall publish notice of time and place of exhibition of the same.
6. Proposals for work to be sealed.

Not to be disclosed till contract is made. Proviso.

7. Contracts exceeding five hundred dollars to be in writing, and signed by the mayor. Not to be altered unless, &c.
8. City council may authorize contracts for repairs or alterations without advertising, &c.
9. Expenditures not to exceed appropriations.
10. Purchases of land for erecting buildings to be made under direction of committee.
11. Certain buildings excepted from preceding section.
12. Superintendent of public buildings to be elected.
13. To give bond. Condition of bond.
14. To have care and custody of school-houses and other buildings. His duties.
15. To keep record. To report to city council.
16. No building or land appurtenant to be sold, without an order from the city council.
17. Superintendent to make and deliver all bills for materials sold and work done to the city treasurer for collection.

## STATUTES.

Care and custody of city property by city council. See Charter *ante*, p. 17, § 39.

1. The city council of the city of Boston shall have the care and superintendence of the public buildings, and the care, custody, and management of all the property of the city, with power to lease or sell the same, except the Common and Faneuil Hall. And the said city council shall have power to purchase property, real or personal, in the name and for the use of the city, whenever its interest or convenience may in their judgment require it.

2. In the county of Suffolk, the court houses, jails, house of correction, fire-proof offices, and all other necessary public buildings for the use of the county, shall be provided by the city of Boston, at its own expense.

In county of Suffolk, public buildings to be provided by Boston.  
G. S. 178, § 6. G. S. 17, § 6.

3. The mayor and aldermen, among other powers and duties of county commissioners, have authority to provide for the erecting and repairing of court houses, jails, and other necessary public buildings, within and for the use of the county.

Board of aldermen to provide for erecting and repairing county buildings.  
G. S. 17, § 16.  
See *ante*, p. 15.  
Proceedings when public buildings are to be erected.  
1852, 266, § 4.

4. No erection, alteration, or repair of any court house, jail, house of correction, fire-proof office, or any other building for the purposes of the county of Suffolk, shall be made by the mayor and aldermen of the said city, except as herein provided, to wit: whenever the mayor and aldermen shall by vote declare that such erection, alteration, or repair is necessary or expedient, they shall make and record an estimate of the expense thereof; and if such estimate shall exceed the sum of five thousand dollars, a copy of the said vote and estimate shall be sent to the common council for its concurrence, rejection, or amendment; and all acts or parts of acts inconsistent with this act are repealed.<sup>1</sup>

5. Whoever wilfully and maliciously, or wantonly and without cause, destroys, defaces, mars, or injures any school-house, church, or other building, erected or used for the purposes of education or religious instruction, or for the general diffusion of knowledge; or any of the out-buildings, fences, wells, or appurtenances of such school-house, church, or other building; or any furniture, apparatus, or other property belonging to or connected with such school-house, church, or other building, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding one year.<sup>2</sup>

Wilful injury, &c., to school-house, church, &c., or furniture, &c., and appurtenances thereof.  
G. S. 161, § 67.  
See G. S. c. 161, §§ 68, 69.

<sup>1</sup> This act was accepted by the citizens of Boston, November 8, 1852.

An Act relating to stables and bowling-alleys, passed May 24, 1851, c. 319, § 1, and to be in force, provided the city council should accept the same, in sixty days, was not so accepted, but in 1853, c. 362, the same act was revived, and accepted by the city council December 5, 1853. It was re-enacted, in part, by the Gen. Stats. c. 88, § 32, and is seen on p. 89, *ante*, § 4.

<sup>2</sup> For penalty for injury to buildings by gunpowder, &c., see *ante*, p. 237, §§ 19, 20; penalty for burning, &c., see Gen. Stats. c. 161.

Injury by oil of  
vitriol, coal-tar,  
&c.  
G. S. 161, § 70.

6. Whoever wilfully and maliciously throws into, against, or upon any dwelling-house, office, shop, or other building or vessel, or puts or places therein or thereon any oil of vitriol, coal-tar, or other noxious or filthy substance, with intent unlawfully to injure, deface, or defile such dwelling-house, office, shop, building, or vessel, or any property therein, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding three years, or by fine not exceeding three hundred dollars.

#### ORDINANCE.<sup>1</sup>

Committee on  
public buildings  
to be appointed,  
July 1, 1850.

SECTION 1. In the month of January in each year there shall be appointed a joint committee of the city council, to be called the committee on public buildings, to consist of three members of the board of aldermen and five members of the common council.

To have care  
and custody of  
school-houses  
and other city  
buildings, ex-  
cept, &c.  
Ibid.

SECT. 2. The said committee shall have the care and custody of all the school-houses and other buildings belonging to the city, and of the erection, alteration, and repair thereof, except as otherwise provided, and subject to such rules, orders, and regulations as the city council may from time to time adopt.

To lease build-  
ings belonging  
to city, subject,  
&c.  
Ibid.

SECT. 3. The said committee are authorized to lease any building belonging to the city, which is not otherwise appropriated, for any period not exceeding three years, and upon such terms and conditions as they may deem expedient, subject, however, to the approval of the board of aldermen; and the lease shall be signed by the mayor.

Lease to be  
signed by  
mayor.

Committee to  
prepare plans  
and specifica-  
tions of build-  
ings to be  
erected.  
Ibid.

SECT. 4. Whenever any building for the use of the city shall be erected, altered, or repaired, the expense of which may exceed the sum of five hundred dollars, it shall be the duty of the committee who shall have the charge of the same to prepare, or cause to be prepared, the requisite plans and specifications of the work to be done.

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<sup>1</sup> An ordinance concerning the public buildings, passed July 1, 1850, and amended July 7, 1853, and July 18, 1853.

SECT. 5. The said committee shall give notice in the newspapers in which the ordinances of the city are published, of the time and place for the exhibition of such plans and specifications, and the time during which proposals will be received.

To publish notice of time and place for exhibition of plans, &c.  
July 1, 1850.

SECT. 6. No proposal shall be received by the said committee from any person offering to contract for such work, unless the same is sealed; and no proposal shall be opened except in committee actually assembled; and the contents of no proposal shall be made known to any person not a member of the committee, until after a contract shall have been made; *provided, always,* that if any such proposals shall be offered by persons, who, in the judgment of the said committee, shall be incompetent to perform their contracts in a workmanlike manner, or irresponsible in respect to their means of faithfully executing the same, the said committee may, in their discretion, reject any such proposal, notwithstanding the same be at a lower rate than other proposals offered for the same work.

Proposals for work to be sealed.  
Ibid.  
How opened.  
Not to be disclosed till contract is made.

Proviso.

SECT. 7. In such cases, where the amount of any contract shall exceed the sum of five hundred dollars, the contract shall be in writing, and signed by the mayor on the part of the city; and after being signed by the parties, no such contract shall be altered in any particular, unless three fourths of the said committee shall signify their assent thereto in writing under their respective signatures, indorsed on the said contract.

Contracts exceeding \$500 to be in writing, and signed by the mayor. Not to be altered, unless, &c.  
Ibid.

SECT. 8. The city council, whenever they shall deem it expedient, may, by order, authorize and direct the committee on public buildings to cause any alterations or repairs of any building specified in such order to be made, although the expense thereof may exceed the sum of five hundred dollars, without advertising for proposals, and without making a contract in writing therefor signed by the mayor, as heretofore required by ordinance.

Contracts for repairing or alterations need not be in writing.  
July 7, 1853.

SECT. 9. The amount of expenditures for the foregoing purposes in any one year, shall never exceed the appropriations made by the city council for the same; and no expenditure exceeding two hundred dollars shall ever be made, in the alteration or repair of any building, without an express vote of the city council authorizing the same.

Expenditures not to exceed appropriations.  
July 1, 1850.

Purchases of land for erecting buildings to be made under direction of committee.  
July 1, 1850.  
Certain buildings excepted from preceding section.  
Ibid.

SECT. 10. Whenever the city council shall order the purchase of any land, for the purpose of erecting any building thereon, such purchase shall be made under the direction of the said committee on public buildings.

Superintendent of public buildings.  
Ibid.

SECT. 11. The preceding sections shall not apply to the jail, the court house, the registry of deeds, the house of correction, or any other buildings of which the erection, care, or maintenance is devolved by law on the board of aldermen.

SECT. 12. There shall be elected annually on the first Monday in February, or within sixty days thereafter, and whenever a vacancy occurs, by concurrent vote of the two branches of the city council, a superintendent of public buildings, who shall hold his office, if not sooner removed, for one year from the first Monday in April in the year in which he shall be elected, and until a successor is elected and qualified. He shall be removable at the pleasure of the city council, and shall receive such compensation as the said council may from time to time determine.

To give bond.  
Ibid.

Condition of bond.

SECT. 13. The said superintendent, before entering on the duties of his office, shall give bond, with one or more sureties, to the approbation of the board of aldermen, with condition that he will not, directly or indirectly, for himself or others, or by others in trust for him, or on his account, have any interest or concern in any contract or agreement for the erection, alteration, or repair of any building belonging to the city, or in any purchase, sale, or lease made by the city under and by virtue of this ordinance.<sup>1</sup>

To have care and custody of school-houses and other buildings.  
Ibid.

His duties.

SECT. 14. The said superintendent, under the direction of the committee on public buildings, or of the board of aldermen, as the case may be, shall have the care and custody of all the school-houses and other buildings belonging to the city, except as otherwise provided, whether used for county purposes or otherwise; he shall keep himself acquainted with their condition; shall employ suitable mechanics, and shall himself superintend all repairs that may be ordered on the same; and, in

<sup>1</sup> For the Act of 1862, c. 101, relating to contracts made by public officers, see *Contracts with City Officers*, ante, pp. 124, 125.

general, he shall render such services as may be required of him, in relation to such buildings, by the board of aldermen, by the committee on public buildings, or by any other committee or board appointed by the city council.

SECT. 15. The said superintendent shall keep an accurate record of all buildings belonging to the city, and lands appurtenant to such buildings; and in the month of January, in each year, he shall present to the city council a report in relation to the same, showing their condition, and the nature and amount of expenditures that shall have been made in relation thereto.

To keep record.  
Ibid.

To report to  
city council.

SECT. 16. No building, or land appurtenant thereto, shall be sold by any committee of the city council, without an order from the city council authorizing such sale.

No building or  
land appurte-  
nant to be sold  
without an or-  
der from the  
city council.  
Ibid.

SECT. 17. Whenever the superintendent of public buildings shall sell any articles or materials belonging to the city, or shall do, or cause to be done, any work for any person or corporation from which money shall become due to the city, the said superintendent shall enter in books to be kept for that purpose all such sales and work done, with the price thereof, and shall forthwith make out bills for the same and deliver them to the city treasurer for collection, and the said treasurer shall forthwith demand payment of the said bills, and in case any bills or dues under this ordinance shall remain unpaid at the expiration of three months after demand for payment as aforesaid, the said treasurer shall deliver the same to the city solicitor for legal proceedings; but if at any time the committee on public buildings shall be satisfied that the interests of the city require it, they may cause legal proceedings to be enforced at any time.

Superintendent  
to make and  
deliver all bills  
for materials  
sold and work  
done to city  
treasurer for  
collection.  
July 18, 1853.

## PUBLIC LANDS.

## ORDINANCE.

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. Committee on public lands to be elected.</li> <li>2. Members to be nominated for and elected land commissioners. Term of office.</li> <li>3. To have care and management of public lands.</li> <li>4. May lay out streets, &amp;c. May lay sewers, &amp;c.</li> <li>5. Superintendent of public lands to be elected.</li> <li>6. Shall give bond. Condition of bond.</li> <li>7. Duties of superintendent.</li> <li>8. May contract to defray expenses by transfer of lands.</li> <li>9. His duties in relation to the laying out of streets, &amp;c.</li> <li>10. All contracts, &amp;c., to be signed by the mayor and countersigned</li> </ol> | <ol style="list-style-type: none"> <li>by superintendent. Plans to be filed.</li> <li>11. Superintendent to make quarterly reports.</li> <li>12. To keep record or account of all vacant lands.</li> <li>13. Moneys, securities, &amp;c., to be paid to and deposited with the treasurer.</li> <li>14. No conveyance to be delivered till purchase-money is paid or secured.</li> <li>15. No expenditure, &amp;c., to be made without sanction of the city council.</li> <li>16. No member of the board of land commissioners to be interested in any contract for lands.</li> <li>17. Organization of board; powers; quorum.</li> <li>18. Repeal of former ordinances, &amp;c.</li> </ol> |
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ORDINANCE.<sup>1</sup>

Joint committee to be chosen.  
Dec. 26, 1856.

SECTION 1. In the month of January in each year, there shall be appointed a joint committee of the city council, to be called the committee on public lands, to consist of such numbers from each board as the city council may from time to time order; and said committee, together with not more than four persons, to be selected as is hereinafter set forth, shall constitute a board of land commissioners.

Members to be nominated for land commissioners.  
Ibid.

SECT. 2. In the month of November or December, in each year, the committee on public lands shall, from their own number nominate one aldermen and one member of the common council, to be members of the board of land commissioners; and the persons so nominated, being confirmed by the city coun-

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<sup>1</sup> An ordinance concerning the public lands, passed December 26, 1856, and amended December 28, 1857, and May 8, 1861.

cil, shall hold their offices for two years from and after the Term of office, commencement of the municipal year then next ensuing.

SECT. 3. The board of land commissioners thus constituted, shall have the care and management of the public lands belonging to the city, so far as relates to the improvement, sale, and disposal of the same, subject to the approval of the mayor, and subject also to the limitations mentioned in this and other ordinances of the city, and to such rules, orders, and regulations as the city council may from time to time adopt.

Land commissioners to have care and sale of public lands.  
Dec. 26, 1856.  
Dec. 28, 1857.

SECT. 4. The said commissioners are authorized to lay out and make such streets, passageways, and squares on the public lands, to lay such sewers therein, and to make such alterations in the lots, as they may deem expedient, subject to the approval of the board of aldermen.

May lay out streets, squares, sewers, &c.  
Dec. 26, 1856.

SECT. 5. There shall be elected annually, on the first Monday in February, or within sixty days thereafter, and whenever a vacancy occurs, by concurrent vote of the two branches of the city council, a superintendent of public lands, who shall hold his office for one year from the first Monday of April in the year in which he shall be elected, and until a successor is elected or he is removed. He shall be removable at the pleasure of the city council, and shall receive such compensation as the said council may from time to time determine.

Superintendent of public lands to be chosen;  
term of office.  
Ibid.

SECT. 6. The said superintendent before entering on the duties of his office, shall give bond with one or more sureties, to the approbation of the board of aldermen, with condition that he will not while holding said office, directly or indirectly, for himself or others, or by others in trust for him, or on his account, have any interest or concern in any purchase, lease, contract, or agreement, to be made in pursuance of this ordinance.

He shall give bond; condition of bond.  
Ibid.

SECT. 7. The said superintendent shall devote himself to the care, improvement, and sale of the public lands, and, under the direction of the said commissioners, shall cause them to be surveyed and laid out into convenient lots, and contract for the sale, and actually sell or lease the same, at public or private sale.

His duties and powers.  
Ibid.

But this and the fourth section shall not apply to the Common, &c.,

not under his  
care.  
Dec. 26, 1856.

mon, the land and flats west of Charles Street, the lands connected with the public institutions at South Boston, or to any other lands purchased or held for specific purposes, unless by special vote of the city council.

Contracts may  
be made by him  
Ibid.

SECT. 8. The said superintendent may, under the direction of the said commissioners, contract and agree for defraying, in part or in whole, the cost or expense incident to or arising out of the performance of any acts which he is by this ordinance authorized to do and perform, by transfer of lands to the contracting parties, in lieu of money, when the same can be done with advantage to the city.

Other services  
may be re-  
quired.  
Ibid.

SECT. 9. The said superintendent shall at all times perform such services as may be required of him by the city council or the committee on public lands or the committee on public buildings, and shall act as secretary to the board of land commissioners.

Deeds, con-  
tracts, &c., how  
executed.  
Ibid.

SECT. 10. All contracts, deeds, conveyances, and leases, made by virtue of this ordinance, shall be signed by the mayor, in the same manner as if the same were made by order of the city council, and shall be countersigned by the said superintendent, and whenever any deed or conveyance of any of the public lands of the city shall contain any reference to any plan belonging to the city, it shall be the duty of said superintendent to file a copy of said plan in the proper registry of deeds, unless a copy thereof shall have been previously filed there.

Plans to be  
filed.  
May 8, 1861.

Superintendent  
to make report,  
&c.  
Dec. 26, 1856.

SECT. 11. The said superintendent shall, at least once in three months, and as often as required, make a true and correct report of his proceedings under this ordinance, and exhibit proper schedules and accounts of all lands sold, moneys received, and securities taken, to the board of aldermen, which shall be by them sent to the common council.

Account of  
lands to be  
kept, &c.  
Ibid.

SECT. 12. The said superintendent shall keep an accurate record or account of all the vacant lands belonging to the city; and whenever any such lands shall be purchased by the city for any purpose, it shall be the duty of the person or persons so purchasing the same to make report thereof forthwith to the said superintendent.

Moneys, notes,

SECT. 13. All money paid by any purchaser or lessee of

the public lands, and all notes, bonds, mortgages, and securities for moneys arising or accruing from, or in virtue of, any contract made by said superintendent under this ordinance, shall be paid to or deposited with the treasurer. &c., to be deposited with treasurer. Dec. 26, 1856.

SECT. 14. No conveyance of any estate in fee or for life, in any lands belonging to the city, shall be delivered until the purchase-money is paid; but the mayor may, from time to time, release to any purchaser or his assigns, any one lot of land, when several lots are included in one contract or bond, on payment of an equivalent portion of the purchase-money. No deed in fee to be given until land is paid for Ibid.

SECT. 15. No expenditure of money, or contract requiring the expenditure of money, shall be made, under or by virtue of this ordinance, without the sanction of the city council, by an appropriation first made to meet such expenditure.<sup>1</sup> Expenditures to be sanctioned by city council. Ibid.

SECT. 16. No member of the board of land commissioners shall be interested, directly or indirectly, in any contract, bargain, sale, or agreement in relation to the public lands, or any matter or thing connected therewith, wherein the city is interested, without an express vote of the city council; and any and all contracts, bargains, sales, or agreements made in violation of this section, shall be at all times voidable by the city.<sup>1</sup> No commissioner to be interested in any matter relating to public lands. Ibid.

SECT. 17. The board of land commissioners shall annually, in the month of January, choose one of their number to be chairman of the board; and said board shall be competent to do or perform any act authorized by this ordinance, or which may hereafter be authorized, at any meeting duly notified, when a majority of the members of the committee on public lands, or a majority of the whole board are present, but not otherwise. Organization of board and quorum. Ibid.

SECT. 18. An ordinance in relation to public lands, passed July twenty-second, eighteen hundred and fifty, repealed April fourteenth, eighteen hundred and fifty-three, and revived March thirteenth, eighteen hundred and thirty-five, as printed on page four hundred and five of the Revised Ordinances of eighteen hundred and fifty-six, is repealed; but such repeal shall not be construed to revive any ordinance whatever. Ordinance repealed, &c. Ibid.

<sup>1</sup> For the provisions in relation to purchases made by officers or agents of the state, cities, towns, or public institutions, see *Contracts with City Officers*, ante, pp. 124-126. Also, *Contracts and Expenditures*, ante, pp. 126, 127.

## RAILROADS — STEAM.

## STATUTES.

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| <ol style="list-style-type: none"> <li>1. Width for road and for materials.</li> <li>2. Location of road to be filed with the county commissioners.</li> <li>3. Corporation may purchase or take land, materials, &amp;c.</li> <li>4. Land used for depot out of limits of road not exempt from taxation.</li> <li>5. Corporation shall pay all damages by laying out, &amp;c.</li> <li>6. Parties dissatisfied may apply for a jury.</li> <li>7. Proceedings where land lies in adjoining counties.</li> <li>8. Application for damages in certain cases to be made within one year.</li> <li>9. In other cases to be made within three years.</li> <li>10. Security for damages may be required.</li> <li>11. Commissioners may issue warrants of distress. Rights of corporations to cease.</li> <li>12. In Boston damages to be assessed by the board of aldermen.</li> <li>13. Application for jury to be made to superior court.</li> <li>14. Corporation may vary direction of road. Proceedings therein.</li> <li>15. Damages in such cases, how recovered.</li> <li>16. Commissioners may order embankments, drains, fences, &amp;c.</li> <li>17. Corporation to maintain fences in certain cases.</li> <li>18. Same subject.</li> <li>19. Penalty for neglect, &amp;c.</li> <li>20. Highways not to be obstructed.</li> <li>21. Railroads to pass over or under highways.</li> <li>22. Corporation must obtain leave to alter grade of highway, &amp;c.</li> </ol> | <ol style="list-style-type: none"> <li>23. When highways are obstructed, proceedings thereon.</li> <li>24. When highway is altered without leave of commissioners, &amp;c.</li> <li>25. Aldermen may petition for alteration of grade of highway, &amp;c.</li> <li>26. Same subject.</li> <li>27. Course of highway, &amp;c., may be altered by leave of commissioners.</li> <li>28. Highways may be laid across railroads.</li> <li>29. Same subject.</li> <li>30. Same subject.</li> <li>31. Corporation to protect its rails at crossings.</li> <li>32. Corporation shall maintain bridges.</li> <li>33. Original jurisdiction in cases of obstructions.</li> <li>34. Supreme judicial court may enforce decisions.</li> <li>35. Corporation to provide superintendent at drawbridges.</li> <li>36. Duties of superintendent.</li> <li>37. Bell and whistle to be attached to locomotives, &amp;c.</li> <li>38. Sign-boards to be erected at crossings.</li> <li>39. Aldermen, &amp;c., may petition for erection of sign-boards.</li> <li>40. Gates, &amp;c., to be erected if necessary.</li> <li>41. Same subject.</li> <li>42. Same subject, in Boston.</li> <li>43. Flag-men may be required at crossings.</li> <li>44. Penalty for violations of orders.</li> <li>45. Penalty for neglect of opening and closing gates.</li> <li>46. Gates may be altered at crossings.</li> <li>47. Railroad corporations subject to certain rules respecting drawbridges.</li> </ol> |
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| 48. Shall keep drawbridges closed, except, &c.<br>49. Drawbridges to be furnished with signals, &c.<br>50. Corporation may erect gates on each side as a warning, &c. | 51. If no gates are erected, trains to stop before reaching drawbridges.<br>52. Penalties on corporation and employees for violation of law. |
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## STATUTES.

1. A corporation may lay out its road not exceeding five rods wide; and for the purpose of cuttings, embankments, and procuring stone and gravel, may within the limits of its charter in the manner herein provided take as much more land as may be necessary for the proper construction and security of the road, or as may be at any time necessary for depot or station purposes.

2. The corporation shall file the location of its road within one year with the commissioners of each county through which the same passes, defining the courses, distances, and boundaries of such portion thereof as lies within each county.

3. A corporation may purchase or otherwise take land or materials necessary for making or securing its road and for depot and station purposes. If it is not able to obtain such land or materials by an agreement with the owner, it shall pay such damages therefor as the county commissioners estimate and determine. Land and materials without the limits of the road shall not be so taken without the permission of the owner, unless the commissioners on the application of the corporation and after notice to the owner first prescribe the limits within which the same may be taken.

4. Land so taken or purchased for depot or station purposes without the limits of the road shall not be exempt from taxation.<sup>1</sup>

5. The corporation shall pay all damages occasioned by laying out and making and maintaining its road, or by taking any land or materials as provided in section three; and such

<sup>1</sup> Steam and horse railroad corporations are held to comply with the several provisions of § 20 of c. 68 of the General Statutes, respecting the registering of stockholders and making returns to the assessors of cities and towns, &c. See post. *Taxes, Assessment of*, § 60.

G. S. 63, § 21.  
 4 Cush. 469.  
 10 Cush. 385.  
 2 Gray, 6, 235.  
 5 Gray, 35.  
 7 Gray, 390.

damages shall upon the application of either party be estimated by the commissioners in the manner provided in laying out highways; and when it is intended to take land or materials, application may be made before the actual taking and appropriation thereof.

Either party  
 may have jury.  
 G. S. 63, § 22.  
 21 Pick. 258.  
 13 Met. 316, 449,  
 479.  
 3 Cush. 58.  
 4 Cush. 291.  
 1 Gray, 72.

6. Either party if dissatisfied with the estimate made by the commissioners may, at any time within one year after it is completed and returned, apply for a jury to assess the damages. Upon such application the prevailing party shall recover legal costs, and the proceedings thereon shall be the same as is provided for the recovery of damages in the laying out of highways; but no jury shall be competent to alter or reverse any order made under section sixteen.

Proceedings  
 when land lies  
 in adjoining  
 counties.  
 G. S. 63, § 23.

7. Where land owned by one person lies contiguously in different counties, applications for damages under section five may be made by the owner of the land to the commissioners of either of such counties; and the commissioners of the county to whom application is first made shall have exclusive jurisdiction with like powers and duties as set forth in said section and section sixteen; and either party may apply for a jury as provided in the preceding section, which jury shall be from the same county as the commissioners, and shall estimate such damages the same as though the land lay entirely in one county.

Application for  
 damages to pri-  
 vate ways.  
 Ibid. § 28.  
 3 Cush. 101, 114.

8. No application for damages shall be sustained against a corporation by the owners of a private way, by reason of any obstruction thereto occasioned by the railroad crossing the same, unless the application is made within one year from the time when the way is so obstructed.

For damages to  
 be made within  
 three years.  
 G. S. 63, § 29.  
 9 Cush. 1.  
 2 Gray, 232.  
 3 Cush. 82.  
 7 Met. 78.  
 Security for  
 damages, &c.,  
 if required.  
 G. S. 63, § 32.

9. No application to the commissioners to estimate damages for land or property taken shall, except when suits are pending, be sustained unless made within three years from the time of taking the same.<sup>1</sup>

10. Upon application to the commissioners by either party for an estimate of damages, they shall if requested by the owner require the corporation to give security to their satisfac-

<sup>1</sup> See Gen. Stats. c. 63, § 30, and Act of 1862, c. 103.

tion for the payment of all damages and costs which may be awarded by them or a jury for the land or property taken ; and if upon petition of the owner with notice to the adverse party the security appears to the commissioners to have become insufficient, they shall require the corporation to give further security to their satisfaction ; and all the right or authority of the corporation to enter upon or use the land or other property, except for making surveys, shall be suspended until it gives the security required. G. S. 63, § 32.

11. Upon an award of damages by county commissioners or a jury against a corporation on the petition of a person injured by the location and construction of its road, the commissioners, after the time to petition for a jury has expired, may issue warrants of distress to compel the payment of the damages with costs and interest ; and if the corporation for thirty days after a warrant of distress or an execution has issued against it for damages and costs for taking land or other property, neglects to satisfy the same, all right and authority to enter upon or use such land or property, except for making surveys, shall be suspended until it pays such warrant or execution. Commissioners may issue warrants of distress. Rights of corporation neglecting payment to cease. Ibid. § 33.

12. If a corporation by virtue of its charter takes land or other property within the city of Boston, the board of aldermen of said city shall, except as provided in the following section, have all the power of commissioners in like cases ; and like proceedings shall be had before said board for the purpose of ascertaining, securing, and obtaining payment of damages, and subject to the same limitations, as upon an application to the commissioners. In Boston damages to be assessed by board of aldermen. Ibid. § 36.

13. Either party, if dissatisfied with the estimate of damages thus made by the board of aldermen, may apply for a jury at the next term of the superior court for the county, after the estimate is made known to the parties ; and thereupon the same proceedings shall be had as in case of estimating and enforcing payment of damages for laying out ways within said city. Jury in such case. Ibid. § 37. 4 Gray, 302, 304.

14. A corporation after having taken land for its road may vary the direction of the road in the place where such land is situated ; but it shall not locate any part thereof without the Corporation may vary direction of road.

Proceedings  
thereon.  
G. S. 63, § 38.  
1 Gray, 340.

limits prescribed by the act of incorporation. It shall before the expiration of the time required by law for completing the road file the location of the different parts thereof where such variations are made with the county commissioners, or if in the city of Boston with the board of aldermen, and the time allowed for completing the whole road shall not be extended in consequence of such variation.

Damages in  
such case.  
G. S. 63, § 39.  
1 Gray, 357.

15. Every corporation shall be liable to the owners of lands taken for making such variations, for all damages occasioned thereby, to be recovered in the manner hereinbefore provided for recovering such damages.

Commissioners  
may order em-  
bankments, &c.  
G. S. 63, § 40.  
2 Cush. 538.  
6 Cush. 421.  
1 Gray, 614.  
See §§ 22, 23.

16. At the time of estimating damages to land-owners under section five, the commissioners shall in addition thereto order the corporation to construct and maintain such embankments, drains, culverts, walls, fences, or other structures, as they judge reasonable for the security and benefit of such owners, and prescribe the time and manner of making or repairing the same.

Corporation to  
make and main-  
tain fences in  
certain cases.  
G. S. 63, § 42.

17. When the owner of land through which a railroad constructed prior to the seventeenth day of April in the year eighteen hundred and forty-one passes, has not received all damages assessed to him, or has not agreed to maintain suitable fences upon such road, upon the application of the owner or of the mayor and aldermen or selectmen of the city or town, the county commissioners may require the corporation to make and maintain fences suitable for the benefit and security of the land-owner, and of travellers upon the road.

Corporation to  
construct fences  
and barriers  
against cattle.  
Ibid. § 43.

18. Each corporation shall erect and maintain suitable fences, with convenient bars, gates, or openings therein, at such places as may reasonably be required, upon both sides of the entire length of any railroad which it shall have constructed subsequently to the sixteenth day of May in the year eighteen hundred and forty-six, except at the crossings of a turnpike, highway, or other way, or in places where a convenient use of the road would be thereby obstructed; and shall also construct and maintain sufficient barriers at such places as may be necessary, and, where it is practicable so to do, to prevent the entrance of cattle upon the road.

19. A corporation unreasonably neglecting to comply with the provisions of the preceding section shall for every such neglect forfeit a sum not exceeding two hundred dollars for every month during which the neglect continues; and the supreme judicial court, or any justice thereof, either in term time or vacation, may by injunction or other suitable process in equity compel the corporation to comply with such provisions; and upon such neglect, may restrain and prohibit the corporation from crossing any turnpike, highway, or town-way, or using any land, until said provisions are complied with.

Penalty, &c.,  
for neglect,  
G. S. 63, § 44.

20. If a railroad is laid out across a turnpike road or other way, it shall be so made as not to obstruct the same.

Highways not  
to be ob-  
structed.  
7 Met. 72.  
3 Cush. 108.

21. A corporation which constructs its road across a turnpike, highway, or town-way, shall construct it so as to cross over or under the same; if over, a sufficient space shall be left under the railroad conveniently to accommodate the travel upon the turnpike or way; if under, the corporation shall build and maintain such bridges with suitable approaches thereto as in like manner to accommodate the travel upon the turnpike or way over the crossing.

Ibid. § 46.  
2 Gray, 56, 465.  
Railroads cross-  
ing highways,  
&c., to pass  
over or under.  
G. S. 63, § 47.  
7 Cush. 497.

22. Such corporation may raise or lower any highway or town-way for the purpose of having its road pass over or under the same; but before proceeding to cross, alter, or excavate for the purpose of crossing a highway or town-way, it shall obtain from the county commissioners a decree prescribing what alterations may be made in the way, and the manner and time of making the alterations or structures the commissioners may require at the crossing; and before entering upon, excavating, or altering the way, shall give security, satisfactory to the commissioners, to the city or town in which the crossing is situated, that it will faithfully comply with the requirements of the decree to the acceptance of the commissioners, and indemnify the city or town from all damages and charges by reason of any failure so to do.

Corporation  
wishing to raise  
or lower high-  
way, &c., to ob-  
tain decree, &c.  
G. S. 63, § 48.  
23 Pick. 326.  
3 Cush. 116, 117.  
9 Cush. 1.  
2 Gray, 56, 465.

23. If upon application of the mayor and aldermen or selectmen of any place to the county commissioners it appears that the corporation crosses with its road a highway or town-

Corporation ob-  
structing high-  
ways, neglect-  
ing bridges, &c.,

commissioners  
may order, &c.  
G. S. 63, § 49.

way in such a place so as to cause an obstruction thereto, or refuses or neglects to erect or keep in proper repair any bridge or other structure required or necessary at such crossing, the commissioners, after due notice to the corporation, may pass a decree prescribing what alterations, structures, or repairs it shall make at the crossing, and the time within which they shall be made; and shall order the corporation to pay the costs of the application. They may further order the corporation to give like security, as provided in the preceding section, for the faithful performance of the requirements of the decree and the indemnity of said place upon any failure in such performance.

Corporation  
proceeding  
without decree,  
or neglecting to  
give security.  
Supreme judi-  
cial court may  
restrain, &c.  
Ibid. § 50.

24. If it is made to appear to the supreme judicial court, or any justice thereof, in term time or vacation, upon the petition of the mayor and aldermen or selectmen of any place, that a corporation has excavated or altered a highway or town-way without obtaining the decree and giving the security required by section twenty-two, or has neglected for fifteen days to give security as required by the preceding section, the court or justice may, by injunction or other suitable process according to the practice of courts of equity, restrain and prohibit the corporation from entering upon, altering, excavating, or crossing the way, until such decree is obtained or the security given.

Aldermen  
or selectmen  
may request  
that way may  
be raised or  
lowered.  
Ibid. § 53.  
3 Cush. 116.  
6 Cush. 424.

25. If the mayor and aldermen or selectmen of a city or town wherein a turnpike, highway, or town-way crossed by a railroad on a level therewith is situated, are of opinion that it is necessary for the security of the public that the turnpike or way should be raised or lowered so as to pass over or under the railroad, they may in writing request the corporation owning the railroad so to raise or lower such turnpike or way. If the corporation neglects or refuses so to do, the mayor and aldermen or selectmen may apply to the county commissioners to decide upon the reasonableness of the request.

Commissioners  
may decide up-  
on necessity of  
raising or low-  
ering ways.  
G. S. 63, § 54.  
3 Cush. 116.  
6 Cush. 424.

26. If the commissioners, after due notice and hearing the parties, decide that such raising or lowering is necessary for the security of the public, the corporation shall comply with the decision and pay the costs of the application. If the commissioners decide that the alteration is not necessary, the mayor

and aldermen or selectmen shall pay the costs. If the corporation unreasonably refuses or neglects to carry into effect the decision of the commissioners, the mayor and aldermen or selectmen may proceed to do it, and may in an action of tort against the corporation recover all charges and expenses occasioned by making the alteration.

G. S. 63, § 54.  
2 Gray, 463.

27. A corporation may alter the course of a highway or town-way for the purpose of facilitating the crossing of the same by its road or permitting its road to pass at the side thereof without crossing, upon obtaining a decree of the county commissioners prescribing the manner and time of such alteration. Before granting the decree the commissioners after due notice to the town in which the way is situated shall decide that the alteration will not essentially injure the way. The corporation shall pay all damages occasioned to private property by the alteration as in case of land taken for its road.

Corporation may, under direction of commissioners, alter course of highways, &c.  
G. S. 63, § 55.

28. If after the laying out and making of a railroad the public convenience and necessity require a turnpike road or other way to be laid out across it, such road or way may be so laid out and established when the county commissioners so authorize and direct; and all expenses of and incident to constructing and maintaining the road or way at such crossing shall be borne by the county, city, town, or corporation owning the same.

Commissioners may authorize laying out ways across railroads.  
Expenses.  
Ibid. § 57.

29. The commissioners before so laying out any way across a railroad shall cause due notice to be given to the corporation that it may be heard in the premises; and after hearing all parties interested they may lay out the same, directing whether the crossing shall be over, under, or at a level with, the railroad, but not permitting it to be at a level unless public necessity so requires. If the way shall pass over the railroad they shall determine and specify in what manner the bridge necessary for the crossing shall be constructed. Such ways shall be so made as not to obstruct or injure the railroad.

Notice to corporation. Manner of constructing crossing.  
Ibid. § 58.

30. The mayor and aldermen or selectmen, before laying out a way across a railroad, shall apply to the county commissioners for permission so to do. The commissioners shall cause

Commissioners may authorize selectmen, &c., to lay out way across railroad.

G. S. 63, § 59. due notice of the application to be given to the corporation owning the railroad; and after hearing the parties interested they may authorize the mayor and aldermen or selectmen so to lay out the way, and shall require it to be laid out and constructed in accordance with the provisions of the preceding section. They shall give special authority permitting it to be laid out upon a level with the railroad when in their opinion public necessity so requires.

Other duties of corporation at crossings.  
Ibid. § 60.

31. A corporation whose road is crossed by a turnpike or other way on a level therewith, shall at its own expense so guard or protect its rails by plank, timber, or otherwise, as to secure a safe and easy passage across its road; and if in the opinion of the county commissioners any subsequent alteration of the turnpike or other way, or any additional safeguards, are required at the crossing, they may order the corporation to establish the same as provided in section twenty-two.

Repairs of bridges at crossings.  
Ibid. § 61.  
7 Met. 70.  
3 Cush. 107.  
7 Cush. 490, 497.

32. A corporation shall maintain and keep in repair all bridges with their approaches and abutments which it constructs over or under any turnpike road, canal, highway, or other way.

Jurisdiction in cases of obstructions.  
G. S. 63, § 62.  
4 Cush. 68.  
2 Gray, 54.  
Supreme judicial court may enforce decisions.  
G. S. 63, § 63.  
6 Cush. 424.  
7 Cush. 506.  
10 Cush. 12.  
2 Gray, 460.

33. The original jurisdiction of all questions touching obstructions to turnpikes, highways, or town-ways, caused by the construction or operation of railroads, shall be vested in the county commissioners within their respective jurisdictions.

34. The supreme judicial court shall have jurisdiction in equity, and may compel such corporations to raise or lower any turnpike, highway, or town-way, when the county commissioners have decided in due and legal form that such raising or lowering is necessary for the security of the public; and to comply with the orders, decrees, and judgments of county commissioners, in all cases touching obstructions to such ways by railroads.

Corporation to provide superintendent of drawbridge.  
G. S. 63, § 73.

35. Every corporation shall provide for each drawbridge of the company a steady and discreet superintendent, experienced in the management of vessels, who shall have full control and direction of the passing of vessels through the draw.<sup>1</sup>

<sup>1</sup> For additional provisions relating to drawbridges, see *post.* pp. 496, 497, §§ 47-52, being the Act of 1863, c. 131.

36. The superintendent shall at all hours of the day and night be ready to open the draw, shall, having regard to the convenient and secure passage of engines and trains and the state of the tide, decide when and the order in which vessels may pass, allowing no unnecessary detention; shall give all necessary advice and furnish proper facilities for such passing; and shall keep posted up in a convenient place, for the inspection of all persons interested, a written copy of his regulations conforming to the provisions of General Statutes, chapter sixty-three, sections seventy-three to eighty inclusive.

Duties of superintendent.  
G. S. 63, § 74.

37. Every railroad corporation shall cause a bell of at least thirty-five pounds in weight, and a steam whistle, to be placed on each locomotive engine passing upon its road; and such bell shall be rung or such whistle sounded, at the distance of at least eighty rods from the place where the road crosses a turnpike, highway, or town-way, upon the same level therewith; and in like manner, when the road crosses any travelled place over which a sign-board is required to be maintained, as provided in section thirty-nine; and such bell shall be rung, or such whistle sounded, either one or the other, continuously or alternately, until the engine has crossed such turnpike, way, or travelled place.

Bell to be attached to locomotive engines, and rung, &c.  
1862, 81, § 1.  
2 Cush. 539.  
10 Cush. 562.

38. Every corporation shall cause boards, well supported by posts or otherwise, to be placed and constantly maintained across each turnpike, highway, or town-way, where it is crossed by the railroad upon the same level therewith; said posts and boards shall be of such height as to be easily seen by travellers without obstructing the travel; and on each side of the boards the following inscription shall be printed in capital letters of at least the size of nine inches each, — RAILROAD CROSSING — LOOK OUT FOR THE ENGINE.

Sign-boards to be erected at crossings.  
G. S. 63, § 84.  
1862, 81, § 2.  
2 Cush. 539.  
10 Cush. 562.  
7 Gray, 100.

39. If the mayor and aldermen or selectmen of a city or town wherein a travelled place is so crossed by a railroad, decide that it is necessary for the better security of the public, that such sign-boards should be maintained at such travelled place, they may in writing request the corporation owning the railroad to erect and maintain them. If the corporation neglects or

Also at travelled places, upon petition of selectmen, &c.  
Costs of application,  
G. S. 63, § 85.

G. S. 63, § 85. refuses so to do, the mayor and aldermen or selectmen may apply to the county commissioners to decide upon the reasonableness of their requests. If the commissioners, after due notice and hearing of the parties, decide that such erection is necessary for the better security of the public, the corporation shall comply with their decision, and pay the costs of the application. If they decide that it is not so necessary, one half of the costs of the application shall be paid by the city or town, and one half by the corporation.

Gates, &c., to  
be erected if  
aldermen, &c.,  
think necessary.  
Ibid. § 86.  
7 Gray, 98.

40. If the mayor and aldermen or selectmen of a city or town wherein a highway, town-way, or travelled place, so crossed by a railroad is situated, shall be of opinion that the provisions contained in the three preceding sections<sup>1</sup> are not a sufficient security to the public, and that it is necessary for such security that gates should be erected across such railroad, turn-pike, highway, town-way, or travelled place, and that an agent be stationed to open and close such gates when an engine passes, or that bars be erected instead of gates, for security across such travelled place, they may in writing request the corporation to erect gates and station an agent, or request the erection of bars. If the corporation shall refuse or neglect to comply with the request, the mayor and aldermen or selectmen may apply to the county commissioners, who shall give due notice and hear the parties.

Same subject.  
Decision of  
commissioners  
to be complied  
with.  
Costs.  
G. S. 63, § 87.  
7 Gray, 98.

41. If the commissioners decide that the public security requires the erection of gates and providing an agent, or the erection of bars, as requested, the corporation shall comply with the decision and pay the costs of the application. If the commissioners decide that the establishment of gates and an agent, or of bars, as requested, is not required, the mayor and aldermen or selectmen shall pay the costs of the application. If the application is for the establishment of gates and an agent at a travelled place, not adjudged to be a town-way or highway,

<sup>1</sup> One of the three sections referred to was § 83 of c. 63 of the General Statutes, and was repealed by the Act of 1862, c. 81, being § 37 in the text.

This section contains all the provisions of the section it repealed, and makes further provision for a steam whistle in addition to the bell.

and the commissioners decide that bars will furnish sufficient security, they may order them to be erected, and make such order respecting costs as justice shall require. G. S. 63, § 87.

42. In the city of Boston the above request may be made by any two or more of the inhabitants of the city, and upon the neglect or refusal of the corporation to comply with their request, they may apply to the board of aldermen; and thereupon like proceedings shall be had, with like liabilities as to costs, as are provided in the preceding section. Proceedings in relation to gates in Boston. Ibid. § 88.

43. If the mayor and aldermen or selectmen of a city or town wherein a turnpike, highway, street, or town-way, so crossed by a railroad, is situated, decide that the safety of the public would be more effectually secured by the stationing of a flag-man than by the erection of a gate at the crossing, they may in writing request the corporation to which the railroad belongs to station a flag-man at the crossing, who shall display a flag whenever a locomotive engine or train of cars passes thereat. If the corporation refuses or neglects so to do, the mayor and aldermen or selectmen may apply to the county commissioners to decide upon the reasonableness of the request; and if the commissioners, after due notice and hearing the parties, decide that the stationing of such flag-man is necessary for the security of the public, the corporation shall comply with the decision, and pay the costs of the application. If the commissioners decide that the stationing of such flag-man is not required, the mayor and aldermen or selectmen shall pay the costs. Aldermen or selectmen may make request for flag-man at crossings. Proceedings. Ibid. § 89.

44. If a corporation unreasonably neglects or refuses to comply with any order or decision made under the seven preceding sections, it shall forfeit for every such refusal or neglect a sum not exceeding one thousand dollars. Penalty for neglect, &c. Ibid. § 90.

45. If an agent so stationed neglects to open or close the gates for the safe passing of an engine on the railroad, or a traveller on the turnpike or other way, or if a flag-man so stationed neglects to display his flag as above required, the agent or flag-man shall for every neglect forfeit a sum not exceeding one hundred dollars; and the corporation shall also be liable for all damages sustained by any person by reason of such neglect of any of its agents, to be recovered in an action of tort. Penalty on agent, &c., for neglect. Ibid. § 91.

Commissioners  
may alter gates  
at crossings,  
G. S. 63, § 92.

46. County commissioners may, on the petition of any party, order an alteration of the location and construction of railroad gates at crossings, when in their opinion the better security of human life or the convenience of the public travel so requires.

Railroads sub-  
ject to certain  
rules respecting  
drawbridges.  
1863, 131, § 1.

47. Every railroad corporation having one or more drawbridges in its passenger tracks shall make and enforce, and every engineer of a passenger train and superintendent of such drawbridge shall observe the rules and regulations provided in the five succeeding sections, in addition to those provided in chapter sixty-three of the General Statutes.<sup>1</sup>

Shall keep  
drawbridges  
closed, except,  
&c.

48. Every such drawbridge shall be kept closed at all times, except while open for the actual passage of vessels, and except on Sundays.

Ibid. § 2.

Drawbridges  
to be furnished  
with signals, &c.  
Ibid. § 3.

49. Every such drawbridge shall be furnished with conspicuous day and night signals, which shall be displayed at all times in such manner as clearly to indicate to the engineer of an approaching train the position of the draw, whether open or closed.

Corporation  
may erect gates  
on each side as  
a warning, &c.  
Ibid. § 4.

50. The corporation may erect, at a distance of five hundred feet from every such drawbridge, or at such other distance as may, on application of the corporation, be prescribed by the county commissioners of the county where the same is located, and on each side thereof, a substantial gate, so constructed, and connected with the draw by suitable mechanism, that the draw, when in position for the passage of trains, cannot be opened or moved until the gates have been closed across the track, in such manner as to be a barrier and warning to any train approaching in either direction.

If no gates are  
erected, &c.,  
trains to stop  
before reaching  
drawbridges.  
Ibid. § 5.

51. If any such drawbridge is not furnished with gates as provided in the preceding section, and in all cases when, by reason of darkness or otherwise, the gates or signals connected with any such drawbridge are not visible from the engine of an approaching passenger train, the engineer of such train shall bring the same to a full stop, at a distance of not less than three hundred nor more than eight hundred feet from such drawbridge,

<sup>1</sup> See the preceding sections in the text.

and shall, before proceeding, positively ascertain that the draw 1863, 131, § 5. is properly closed for the passage of trains; *provided, however,* that when such drawbridge is between two railroad crossings at grade within six hundred feet of each other, one stop only shall be required for such crossings and drawbridge.

52. Every railroad corporation neglecting to comply with Penalties for violation of act. Ibid. § 6. the provisions of the five preceding sections, shall forfeit the sum of one hundred dollars for each day such neglect is continued; and any engineer, or superintendent of a drawbridge, violating any of the provisions of said five preceding sections, or any rule or regulation established in conformity thereto by the corporation by which he is employed, shall forfeit the sum of one hundred dollars for each offence. Said forfeitures may be recovered upon complaint or indictment in the county where the offence is committed, to the use of the complainant.

## RAILROADS — HORSE.

### STATUTES.

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| <ol style="list-style-type: none"> <li>1. Horse railroad corporations subject to the provisions of General Statutes, c. 63, only as provided in their charters.</li> <li>2. Roads to be constructed within twelve months, and commenced within six months after location.</li> <li>3. Horse cars to stop at crossings of steam railroads. Penalty for violation.</li> <li>4. Corporations violating rules and regulations of board of aldermen liable to a penalty. May apply to supreme judicial court for appointment of commissioners to alter or revoke rules, &amp;c.</li> <li>5. When two roads connect, provision may be made for sale of tickets for passage over both roads.</li> </ol> | <ol style="list-style-type: none"> <li>6. When connecting horse railroads, using each other's road, cannot agree upon mode of connection, use, compensation, &amp;c., commissioners to be appointed.</li> <li>7. Commissioners may also fix compensation from beginning of use.</li> <li>8. Supreme court may determine compensation for use, till decision of commissioners.</li> <li>9. If corporation fails to pay monthly, may be enjoined from use, &amp;c.</li> <li>10. When commissioners fix rate of compensation for use, adjustment to be made of same rate for time covered by previous order of court.</li> <li>11. Fees of commissioners, costs, &amp;c., how allowed and paid.</li> <li>12. When act to take effect, repeal, &amp;c.</li> <li>13. All tracks to be of uniform gauge.</li> </ol> |
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## RULES AND REGULATIONS.

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| <ol style="list-style-type: none"> <li>1. Rules to be observed by officers, &amp;c., of horse railroad corporations.</li> <li>2. Speed at which cars may be driven.</li> <li>3. Speed when turning corners of streets.</li> <li>4. When driven in same direction with other cars, how driven.</li> <li>5. When driven in opposite directions not to stop abreast, except, &amp;c.</li> <li>6. Not to stop on crossings, &amp;c.</li> <li>7. How stopped at intersection of streets.</li> <li>8. Conductors, &amp;c., to keep watch for teams, &amp;c., and especially for children.</li> </ol> | <ol style="list-style-type: none"> <li>9. Ladies and children not to enter or leave car when it is in motion.</li> <li>10. Conductors shall announce the names of squares and streets.</li> <li>11. Snow-ploughs prohibited when sleighing is good. Snow not to be removed, except, &amp;c.</li> <li>12. Salt, &amp;c., not to be sprinkled on rails, except, &amp;c.</li> <li>13. Cars on Tremont Street at certain hours not to stop near office, &amp;c., more than one minute. Not to stop on any main track of any road, &amp;c., except to leave or take up passengers.</li> <li>14. Rules and regulations of the board to be placed in each car.</li> </ol> |
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## STATUTES.

Horse railroads excepted.  
G. S. 63, § 139. 1. Horse and street railroad corporations shall not be subject to the provisions of the sixty-third chapter of the General Statutes, except as provided in their several charters.<sup>1</sup>

Time of construction of.  
Ibid. § 140. 2. Every horse or street railroad corporation chartered subsequently to the twentieth day of May, eighteen hundred and fifty-seven, shall construct its road within twelve months after its location; and the location of the road of every such corporation failing to commence the construction of its road within six months after its location shall be void.

Horse cars to stop at crossings of steam railroads.  
Penalty.  
Ibid. § 142. 3. When a horse railroad crosses or is crossed by a steam railroad at grade, the driver of the car upon the horse railroad shall when approaching the point of intersection stop his car within one hundred feet of the crossing. For each violation of this section the driver shall forfeit five dollars, and the corporation on whose railroad the offence is committed shall forfeit ten dollars.

Regulations of aldermen; violation of; penalty for.  
1861, 199, § 1. 4. If any horse railroad corporation within the city of Boston shall violate any lawful rule or regulation of the board of aldermen of said city, or if any horse railroad corporation in any

<sup>1</sup> Horse railroad corporations are required to make annual returns, &c., to the assessors, of stockholders, &c. See note *ante*, p. 485.

other city or town shall violate any lawful rule or regulation<sup>1</sup> of 1861, 199, § 1. the board of mayor and aldermen of any city, or of the selectmen of any town, such corporation shall be liable to a penalty of not more than fifty dollars for each offence; *provided, however*, that any person or corporation affected by any rule or regulation<sup>1</sup> established by the board of aldermen or selectmen as aforesaid, may apply to the supreme judicial court for the appointment of three commissioners as hereinafter provided in the succeeding section, who shall, after hearing all parties, modify, revoke, or approve in whole or part, said rules and regulations as they shall judge the interests of the public require, and whose report when confirmed by the said court, shall be final and conclusive.

Commissioners may be appointed to alter, &c.; rules, &c. Ibid.

5. Whenever the track of any horse railroad corporation within the city of Boston shall connect with the track, or terminate at the terminus of any other horse railroad corporation, either of said corporations shall have the right to notify such other corporation of its desire to have the passengers upon its road transported over such other road within the city of Boston, and to have checks or tickets issued by such other corporation, so that the same may be distributed or sold upon the cars of the road so applying to the passengers in such cars, entitling the holder of the same to a passage in the cars of such other road to a point or points within the city of Boston; and if such corporation shall be unable to agree upon the terms and conditions upon which such commutation, transfer, or exchange tickets shall be issued, the supreme judicial court, upon the petition of either party, and notice to the other party and to the city of Boston, shall appoint three commissioners, who, after due notice to the parties and to the city of Boston, and after hearing said parties and said city, shall establish the terms and conditions on which commutation, transfer, or exchange tickets shall be issued, and shall fix and determine all other things needful to insure and subserve the convenient transfer of the passengers upon one road to the cars of the other, therein to be transported to a point

When two roads connect, provision may be made for sale of tickets for passage over both roads. 1861, 199, § 2. See §§ 6-12.

<sup>1</sup> See *Rules and Regulations*, post. p. 502.

1861, 199, § 2.

or points on such road within the city of Boston; said commissioners, in their award, shall have reference to convenience and interests of the public, and of the corporations to be accommodated or affected thereby, and the award of the said commissioners, or of a major part of them, being returned to and approved by the court, shall be binding upon the respective corporations interested therein, until the same shall have been revised or altered by commissioners upon like notice and in like manner appointed; but no such revision or alteration shall be made within one year from the acceptance of such award. The costs of such application shall be assessed upon said corporations, as said commissioners or the court shall determine.

When connecting horse railroads, using each other's road cannot agree upon mode of connection, use, compensation, &c., commissioners to be appointed.  
1863, 223, § 1.

6. Whenever any horse railroad corporation is authorized by law to connect its road or track with the road or track of another such corporation, and whenever any such corporation, either itself or by its lessees or assigns, enters upon and uses, under authority of law, in any manner the road or track, or any portion thereof, of another such corporation, and the corporations cannot agree upon the mode of such connection, or the manner and stated periods of such use, or the compensation to be paid therefor, the supreme judicial court, upon the petition of either party, and notice to the other, shall appoint three commissioners, who, after due notice to and hearing the parties interested, shall determine such rate of compensation, or fix the mode of such connection, or the manner and stated periods of such use, having reference to the convenience and interest of the corporations and the public to be accommodated thereby; and the award of the commissioners, or a major part of them, shall be binding upon the respective corporations interested therein, until the same is revised or altered by other commissioners appointed in the same manner; but no such revision or alteration shall be made within one year after the last award.

Commissioners may also fix compensation from beginning of use.  
Ibid. § 2.

7. Whenever commissioners are so appointed to determine the compensation to be paid for the use of the road or track of another corporation, they shall, if desired by either party, determine the compensation to be paid therefor from the com-

mencement of such use, excepting, however, such period of time, if any, as is covered by the award of previous commissioners, or by agreement of the parties.

8. Whenever such entry upon and use of the tracks of another corporation are hereafter made, the corporation so entering and using shall, until the rate of compensation is fixed by commissioners, or by agreement, pay, monthly, for such use from the time of entry at such rate as the supreme judicial court shall, on petition of either party, and notice to the other, from time to time, order; but the rate of compensation thus fixed by the court shall not be deemed, in any manner, to preclude the judgment of commissioners, as to the amount which ought justly to be allowed and paid for such use.

Supreme court may determine compensation for use, to be paid monthly, till decision of commissioners. Ibid. § 3.

9. In case the corporation so using the tracks of another corporation fails to make the monthly payment herein provided for, the further use of said tracks may be enjoined by the supreme judicial court, until all payments in arrear have been made or satisfactorily secured.

If corporation fails to pay monthly, it may be enjoined from use, &c. Ibid. § 4.

10. If the compensation fixed by commissioners for such prior use of the tracks of another corporation, exceeds the rate previously fixed by the court under the eighth section, the excess shall be paid by the party using such tracks; and in case it falls below said rate, the difference shall be deducted from the compensation subsequently accruing.

When commissioners fix rate, adjustment to be made of same rate for time covered by previous order of court. Ibid. § 5.

11. In all cases heard before commissioners under the provisions of the preceding sections, the expenses and costs attending the same, including the compensation of the commissioners, shall be paid by such party, or divided between the parties, in such proportions, as the commissioners determine. The court appointing the commissioners shall fix and award them such compensation for their services and expenses as is deemed by the court just and reasonable.

Fees of commissioners, costs, &c., how allowed and paid. Ibid. § 6.

12. This act shall take effect upon its passage, but shall not affect any proceeding now pending. All acts and parts of acts inconsistent herewith, are hereby repealed.

When act to take effect, repeal, &c. Ibid. § 7.

13. All railroad corporations now established or hereafter established, for the carriage of passengers, and required by their

Tracks to be uniform gauge 1863, 100, § 1.

- 1863, 100, § 1. charters to operate their roads by horse power only, shall construct and maintain their tracks or road of the uniform gauge of four feet eight and one half inches.

#### RULES AND REGULATIONS.<sup>1</sup>

In the exercise of the rightful power reserved to the board of aldermen in the several and respective charters of the horse railroads running through the streets of the city of Boston, it is ordered as follows : —

Rules to be  
observed.  
June 27, 1857.

SECTION 1. The following rules shall be observed by the officers, agents, and servants of the aforesaid corporations, in the mode of using the rails of their respective roads in the streets of Boston; and the same rules shall be applied to all other railroads which may hereafter be located in the streets of Boston.

Speed at which  
cars may be  
drawn.  
Ibid.

SECT. 2. No car shall be drawn at a greater speed, in the city proper, in any street north of Dover Street and the Federal Street Bridge, than five miles an hour, nor in any other street in the city, at a greater speed than seven miles an hour.

When turning  
corners.  
Ibid.

SECT. 3. While the cars are turning the corners, from one street to another, the horses shall not be driven faster than a walk.

When driven in  
same direction  
with others.  
Ibid.

SECT. 4. Cars driven in the same direction shall not approach each other within a distance of three hundred feet, except in case of accident, when it may be necessary to connect two cars together, and also, except at stations.

When driven in  
opposite direc-  
tions.  
Ibid.  
Not to stop on  
crossings, &c.  
Ibid.

SECT. 5. Cars running in different directions shall not be allowed to stop abreast of each other, except at stations.

SECT. 6. No car shall be allowed to stop on a cross-walk, nor in front of an intersecting street, except to avoid collisions, or to prevent danger to persons in the street.

Stopping at in-

SECT. 7. When the conductor of any car is required to stop

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<sup>1</sup> Rules and regulations passed by the board of aldermen, June 27, 1857, January 18, 1858, and December 30, 1862.

at the intersection of two streets, to receive or land passengers, tersection of streets.  
 the car shall be stopped so as to leave the rear platform slightly June 27, 1857.  
 over the farther crossing.

SECT. 8. The conductors and drivers of each car shall keep Conductors, &c., shall keep  
 a vigilant watch for all teams, carriages, persons on foot, and watch for teams, &c.  
 especially children, either on the track or moving in the direction Ibid.  
 of the track; and on the first appearance of danger to such  
 teams, carriages, persons, or children, or other obstruction, the  
 car shall be stopped in the shortest time and space possible.

SECT. 9. The conductors shall not allow ladies or children Ladies, &c., not to enter or leave car when in motion.  
 to enter or leave the cars while in motion. Other passengers Ibid.  
 may be allowed to enter the cars and depart therefrom, while  
 the cars are at a full stop or nearly stopped.

SECT. 10. Conductors shall announce to the passengers the Conductors to announce names of streets, &c.  
 names of the squares and principal streets as the car reaches Ibid.  
 them.

SECT. 11. Whenever there shall occur a fall of snow of Snow-ploughs prohibited when sleighing is good.  
 sufficient depth to allow vehicles to pass over the same on run- Jan. 18, 1858.  
 ners, no snow-plough shall be allowed to pass over the several  
 tracks of the street or horse railroad corporations, within the  
 limits of the city of Boston, nor shall the respective corpora- Snow not to be removed, except, &c.  
 tions cause or allow snow to be removed from their several Ibid.  
 tracks without consent being first obtained of the superintend-  
 ent of streets, with the approbation of the committee on  
 paving. The consent for the removal of the snow for the  
 opening of the tracks being refused, the several corporations  
 are authorized to use a sufficient number of sleighs to convey  
 passengers requiring a transit over their respective roads, day  
 by day, until the cars can be used on the tracks.

SECT. 12. The several corporations shall not sprinkle salt Salt, &c., not to be put on rails.  
 or any article of a decomposing nature on their tracks or rails, Ibid.  
 or cause or allow the same to be done by any of their agents,  
 for the purpose of melting the snow; or wash, or cause to be  
 washed by any of their agents, the said tracks and rails with  
 brine or pickle, for a like purpose, unless a permit is granted  
 by the superintendent of streets allowing the same to be done,  
 and said permit shall only be granted when the use of said

Jan. 18, 1858. articles will not be detrimental to vehicles on runners crossing the tracks and rails.

Cars on Tremont Street at certain hours not to stop more than one minute, &c.  
Dec. 29, 1862.  
Not to stop on any main track, except, &c.  
Ibid.

SECT. 13. No car upon any main railroad track in Tremont Street shall be allowed between the hours of six o'clock in the forenoon and eight o'clock in the afternoon, to stop near any office or station more than one minute, unless detained by obstacles on the track or to avoid collision. And no car upon any main track of any street railroad within the city proper shall, between said hours, be allowed to stop, except while passengers are actually leaving or entering the same, or while detained by obstacles upon the track, or to avoid collision.

Rules and regulations to be placed in each car.  
June 27, 1857.

SECT. 14. The several corporations shall place and keep placed, a printed copy of all the rules and regulations of the board of aldermen, in a conspicuous position, in each car run upon their respective roads.

#### BROADWAY HORSE RAILROAD.

##### SPECIAL ACTS.

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|---|---|
| <ol style="list-style-type: none"> <li>1. Corporators. Where road to be located. Tracks to be laid as aldermen direct. Aldermen to give notice before locating. Corporation to fix rates for transporting.</li> <li>2. Horse power only to be used.</li> <li>3. Corporation to keep streets in repair, and liable for injuries.</li> <li>4. Penalty for obstructing road. Penalty on corporation for obstructing highways, &amp;c.</li> <li>5. Capital stock, shares, &amp;c.</li> <li>6. Corporation may hold real estate.</li> <li>7. City of Boston may purchase franchise, &amp;c., after ten years.</li> <li>8. Grade, gauge, and construction of road to be fixed by board of aldermen.</li> <li>9. Aldermen may discontinue any part of the location.</li> </ol> | <ol style="list-style-type: none"> <li>10. City may take up streets.</li> <li>11. Act void unless accepted by the city council and the corporation.</li> <li>12. Corporation to make returns.</li> <li>13. Charter limited to fifty years.</li> <li>14. Rates of fare in city not to exceed five cents, except, &amp;c. Legislature may repeal or alter charter.</li> <li>15. Act of 1854, c. 444, revived.</li> <li>16. Aldermen may extend tracks. Corporation may use Dorchester Avenue Railroad.</li> <li>17. May connect with other roads by consent of board of aldermen. If parties cannot agree on terms, court may appoint commissioners to determine all matters.</li> <li>18. Commissioners to be paid by the parties.</li> <li>19. Corporation have the right to</li> </ol> |
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purchase of or sell to any other.	authorized, &c. Privileges and restrictions.
20. Act void unless accepted.	24. May connect with other roads.
21. Time extended to pay in capital, and limitation of charter.	<i>Locations.</i>
22. Increase of capital authorized on conditions.	1. First Location, p. 512.
23. Further extension of tracks	2. Second Location, p. 514.
	3. Third Location, p. 516.

## SPECIAL ACTS OF INCORPORATION.

1. Charles J. F. Allen, Seth Adams, John P. Monks, Corporators. 1854, 444, § 1.  
 their associates and successors, are hereby made a corporation, by the name of the Broadway Railroad Company, with power to construct, maintain, and use a railway or railways, with convenient single or double tracks, from South Boston Where to be located. Ibid.  
 Point, so called, at the eastern extremity of Fourth Street, in the city of Boston, upon and over such streets and highways of said city as may, from time to time, be fixed and determined by vote of the mayor and aldermen thereof, and assented to, in writing, by the said railroad corporation, to a point near the intersection of Broadway and Turnpike Street, or other street, for the purpose of forming a junction with, and entering upon, the Dorchester Avenue Railroad [Company] in said Boston; Tracks to be laid as aldermen direct. Ibid.  
*provided*, that all tracks of said railroad shall be laid at such distances from the sidewalks in said city as the mayor and aldermen thereof shall, in their orders fixing the routes of said railroad, determine to be for the public safety and convenience; and *provided, further*, that the written assent of said railroad Assent of corporation as to routes. Ibid.  
 corporation, to any vote or votes of the mayor and aldermen of said city, prescribing, from time to time, the routes of said road, shall be filed with the clerk of said city, and shall be taken and deemed locations thereof; and also *provided*, that, before the Aldermen to give notice before locating. Ibid.  
 location or construction of any track in any street, the mayor and aldermen of said city shall give notice to the abutters thereon, by the publication of an order of notice from said mayor and aldermen, in one or more newspapers published in the city of Boston, fourteen days at least before the hearing upon the location of any such tracks, that said abutters may show cause, if any there be, why said track should not be so located and

Corporation to  
fix rates of com-  
pensation.  
1854, 444, § 1.

Rights and  
duties.  
Ibid.

Horse power  
only to be used.  
Ibid. § 2.

Corporation to  
keep streets in  
repair; liable  
for injuries.  
Ibid. § 3.

Persons ob-  
structing road  
may be fined or  
imprisoned.  
Ibid. § 4.

Corporation ob-

constructed; and the said railroad corporation shall have power to fix, from time to time, such rates of compensation for transporting persons or property thereon, as they may think reasonable and expedient; and said corporation shall be subject to all the duties, restrictions, and liabilities, and entitled to all the rights and privileges prescribed by the forty-fourth chapter of the Revised Statutes.<sup>1</sup>

2. Said tracks or roads shall be operated and used, by said corporation, with horse power only; and it shall not connect its track with any other railroad on which other power is used. The mayor and aldermen of said city shall have power, at all times, to make all such regulations as to the rate of speed, and mode of use of said tracks, as the public convenience and safety may require.<sup>2</sup>

3. Said corporation shall maintain and keep in repair such portions of the streets, respectively, as shall be occupied by their tracks, and shall be liable for any loss or injury that any person may sustain, by reason of any carelessness, neglect, or misconduct of its agents or servants, in the management, construction, or use of said tracks or roads; and in case any recovery shall be had against said city, by reason of such defect, want of repair in, or use of, said tracks or roads, said corporation shall be liable to pay to said city any sum thus recovered against it, together with all costs and reasonable expenditures incurred by said city, in the defence of any such suit or suits, in which such recovery shall be had; and said corporation shall not encumber any portion of the streets not occupied by the said road or tracks.

4. If any person shall wilfully and maliciously obstruct said corporation, in the use of said road or tracks, or the passing of the cars or carriages of said corporation thereon, such person, and all who shall be aiding or abetting therein, shall be punished by a fine not exceeding five hundred dollars, or may be imprisoned in the common jail for a period not exceeding three months. If said corporation, or its agents or servants, shall

<sup>1</sup> See Gen. Stats. c. 68.

<sup>2</sup> See *Rules and Regulations*, ante, p. 502.

wilfully and maliciously obstruct any highway, or the passing of any carriages over the same, said corporation shall be punished by a fine not exceeding five hundred dollars. structing highway to be fined. 1854, 444, § 4.

5. The capital stock of said corporation shall not exceed the sum of one hundred and fifty thousand dollars, to be divided into shares of fifty dollars each; and no shares shall be issued for a less sum, to be actually paid in on each, than the par value of the shares which shall first be issued. Capital stock shares, &c. Ibid. § 5.

6. Said corporation shall have power to purchase and hold such real estate, within said city, as may be necessary or convenient for the purposes and management of said road. Corporation may hold real estate. Ibid. § 6.

7. The said city of Boston may, at any time during the continuance of the charter of the said corporation, and after the expiration of ten years from the opening of any part of said road for use, purchase of said corporation all the franchise, property, rights, and furniture of said corporation, by paying said railroad company therefor such a sum as will reimburse to each person who may then be a stockholder therein, the par value of his stock together with a net profit of ten per cent. per annum, from the time of the transfer of said stock to him, on the books of the corporation, deducting the dividends received by said stockholders thereon. City of Boston may purchase the franchise, property, &c. Ibid. § 7.

8. The said road shall be constructed and maintained in such form and manner, and upon such grade, and with such gauge,<sup>1</sup> as the mayor and aldermen of said city may, in their votes, fixing and determining the routes thereof, as aforesaid, prescribe and direct; and whenever, in the judgment of said railroad corporation, it shall be necessary to alter the grade of any street so occupied by it, such alteration may be made at the sole expense of said corporation, provided the same shall be assented to by the mayor and aldermen of said city. Grade, gauge, and construction of road to be fixed by aldermen. Ibid. § 8.

9. At any time after the expiration of one year from the opening for use of the tracks of said railroad, in any street in which the same may be located, as provided by its charter, the Aldermen may discontinue any part of road. Ibid. § 9.

<sup>1</sup> By the Act of 1863, c. 100, the tracks of all horse railroads are to be of the uniform gauge of four feet eight and one half inches. See *Horse Railroads*, ante, p. 501, § 13.

1854, 444, § 9. mayor and aldermen of the city of Boston may, by vote of the major part thereof, determine that the same or any part thereof may be discontinued, and thereupon the location shall be deemed to be revoked, and the tracks of the said railroad shall forthwith be taken up and removed, in conformity with such vote or order of said mayor and aldermen, provided that such taking up and removal shall be at the expense of said railroad corporation.

City may take up streets.  
Ibid. § 10. 10. Nothing in this act shall be construed to prevent the authorities of said city from taking up any of the public streets traversed by said railroads, for the purposes for which they may now lawfully take up the same.

Act to be void unless accepted by city council and corporation, &c.  
Ibid. § 11.  
See p. 510, § 21. 11. This act shall be void, so far as relates to the right to construct said road in said city, unless the same shall be accepted<sup>1</sup> by the city council of said city, and unless the same shall be accepted by the said corporation, and ten per cent. of the capital stock thereof be actually paid in within two years from the passage of this act.

Corporation to make returns.  
Ibid. § 12. 12. The said corporation shall be deemed a railroad corporation, so far as to be subject to make such annual returns to the legislature, as are or may be prescribed by law, but not to other general provisions of law in relation to railroad corporations.

Limitation of charter.  
Ibid. § 13. 13. The existence of said corporation is hereby limited to the period of fifty years from the passage of this act.

Rates of fare in city.  
Ibid. § 14. 14. The rates of fare upon the said railroad, between any two points in the city of Boston, shall never exceed five cents for each passage, unless with the assent of the mayor and alder-

Charter may be repealed, &c.  
Ibid. men of the said city; *provided, nevertheless*, that the legislature may at any time repeal this act, or limit, restrict, or annul any powers herein granted.

Second act.  
Act of 1854,  
c. 444, revived.  
1856, 260. 15. Chapter four hundred and fifty-four of the Acts of eighteen hundred and fifty-four, being “An act to incorporate the Broadway Railroad Company,” is hereby revived, and continued in force for a period of three years from the passage hereof.

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<sup>1</sup> The act was accepted by the city council of Boston, December 27, 1856.

16. The mayor and aldermen of the city of Boston are hereby authorized to extend the location of the tracks of the Broadway Railroad Company, upon and over such streets within said city as may be determined by them, with the assent, in writing, of said company; and the Broadway Railroad Company are hereby authorized to construct, maintain, and use such tracks as may be located as above, with the same powers and privileges, and subject to the same duties, liabilities, and restrictions in relation thereto, as if they had been authorized to be located by the act by which said company was incorporated; and the said company shall have the right to use and run over, with their cars and horses, the tracks now laid, or which may hereafter be laid by the Dorchester Avenue Railroad Company, within the city of Boston, excepting that part of the track of the Dorchester Avenue Railroad Company now laid south of Fourth Street; paying to the Dorchester Avenue Railroad Company a reasonable amount for the use thereof; such amount, in case of dispute, to be ascertained and determined, from time to time, by commissioners appointed by the supreme judicial court.

Third act.  
Aldermen may  
extend tracks.  
1857, 216, § 1.

Corporation  
may use Dor-  
chester Avenue  
railroad in part.  
Ibid.

17. And for the purposes of conveying passengers to and from South Boston, the Broadway Railroad Company may connect with the road of any other company besides the Dorchester Avenue Railroad Company, with which the board of aldermen of the city of Boston may authorize it to connect. And in case any such connection shall be made, and the Broadway Railroad Company shall be unable to agree with the company owning the road connected with, as to the mode of connection, and the manner, time, and extent of use of the last-named road by the Broadway Railroad Company, and the compensation to be paid by the Broadway Railroad Company for such use, then the supreme judicial court, upon the petition of either party, and upon notice to the other party, shall appoint three commissioners, who shall, upon due notice to the parties interested, proceed and determine all matters relating to such connection and use, and the compensation to be paid therefor, not agreed upon by said corporations; and in regulating such connection and

May connect  
with any other  
road if alder-  
men consent.  
Ibid. § 2.

If parties can-  
not agree on  
terms, supreme  
judicial court  
may appoint  
commissioners  
to determine all  
matters.  
Ibid.

1857, 216, § 2.  
See *ante*, §§ 6-12.

use, the commissioners shall have reference to the interests of said corporations and of the public accommodated by said roads, and the award of said commissioners, or a major part of them, shall be binding upon the respective corporations interested therein, until the same shall have been revised or altered by commissioners, to be appointed by the said court, upon application and in manner aforesaid; but no such revision or alteration shall be made by any commissioners to be appointed as aforesaid, within one year after such decision and award shall have been made, unless said court shall be of opinion that such a revision may be sooner required or advisable.<sup>1</sup>

Commissioners  
to be paid by  
the parties.  
Ibid. § 3.

18. The compensation of said commissioners for their services and expenses, shall be paid by the respective corporations interested therein, in equal proportions.

The company  
may purchase  
of or sell to any  
other company.  
Ibid. § 4.

19. The said Broadway Railroad Company shall have the right, with the consent of three quarters of the stockholders in number and value, at all times to purchase of or to sell to any other company, chartered for a similar purpose, all or any part of the tracks which may be hereafter laid by it or any other such company, under the provisions of their charters; and such purchase or sale shall transfer all the corporate rights and rights of location which may pertain to the tracks so purchased or sold.

Act void unless  
accepted by city  
council.  
Ibid. § 5.

20. This act shall be void unless the same shall be accepted by the city council of Boston, within one year from the passage thereof.<sup>2</sup>

Fourth act.  
Time to pay in  
capital stock  
extended.  
1858, 15, § 1.  
See *ante*, p. 508,  
§ 11.

21. The time within which the Broadway Railroad Company is required by the eleventh section of the four hundred and forty-fourth chapter of the Acts of eighteen hundred and fifty-four to pay in ten per cent. of its capital stock, is hereby extended for the period of six months from the passage of this act. The existence of said corporation shall continue for the period limited in the thirteenth section of said four hundred and

See § 13.

<sup>1</sup> The Act of 1863, c. 223, makes new provisions for the manner of settling controversies between railroad corporations. See *ante*, pp. 500, 501, §§ 6-12.

<sup>2</sup> Accepted by city council, November 30, 1857.

forty-fourth chapter, subject to the provisions of said chapter; 1858, 15, § 1. of the two hundred and sixteenth chapter of the Acts of eighteen hundred and fifty-seven, and of this Act.

22. Said corporation is hereby authorized to increase its capital stock by an amount not exceeding \$ 100,000, to be divided into shares of \$ 50 each; *provided*, that no shares shall be issued for a less sum, to be actually paid in, than the par value thereof; *provided, also*, that this act shall not go into operation until it shall be assented to by the city of Boston.<sup>1</sup>

Capital stock  
may be in-  
creased.  
Ibid. § 2.

23. The mayor and aldermen of the city of Boston are authorized to extend the location of the tracks of the Broadway Railroad Company upon and over such streets, bridges, and highways in said city as may from time to time be fixed and determined by said mayor and aldermen, and assented to in writing by said company; and said company is authorized to construct, maintain, and use any tracks which may be so located, and in relation thereto shall have all the powers and privileges, and be subject to all the duties, liabilities, and restrictions which they would have had or been subject to if such tracks had been authorized and located under the act by which said company was incorporated.

Fifth act.  
Extension of  
tracks author-  
ized.  
1861, 188, § 1.

Conditions to  
be fixed by  
aldermen.  
Ibid.

Privileges and  
restrictions.  
Ibid.

24. Said company is authorized to connect with, use, and run over with its cars and horses, such other railroads in said city, as may from time to time be fixed and determined by the mayor and aldermen aforesaid, but only for the purpose of carrying by one convenient and proper route, passengers to and from South Boston and Scollay's Building;<sup>2</sup> the compensation to be paid for the use of such other road, to be ascertained in the mode and manner prescribed in the second section of the act entitled "An act concerning the Broadway Railroad Company," approved May twenty-third, in the year one thousand eight hundred and fifty-seven.

May connect  
with other  
roads.  
Ibid. § 2.

1857, 216.

<sup>1</sup> Accepted by city council, May 28, 1858.

<sup>2</sup> By the Act of 1862, c. 175, further provisions are made for the joint use of the tracks of the several railroads. See post. *Suffolk Horse Railroad*, §§ 21-30.

*First Location.*

March 24, 1858.

1. The tracks of the Broadway Railroad are located as follows : but on the express condition to the location that said railroad company shall at all times after the rails are laid down, keep in good order and complete repair, at their own expense, that portion of all the streets through which the said rails are or may be laid, lying between the rails, and also that portion of the street lying outside of the rails and adjacent thereto, extending one foot and a half from and outside of each rail, throughout the whole length of said railroad, in the streets of the city of Boston.

The repairing to be done at all times to the satisfaction of the superintendent of streets.

One track in the centre of Fourth Street, from the junction of Fourth Street with P Street to K Street.

One track in the centre of K Street, from Fourth Street to Broadway.

Two tracks in the centre of Broadway, from K Street to the track of the Dorchester Avenue Railroad, in Dorchester Avenue.

One track in Dorchester Avenue, from Broadway to the Federal Street Bridge, alongside of the track of the Dorchester Avenue Railroad.

A turnout in Federal Street, to connect with the track of the Dorchester Avenue Railroad, commencing at the southerly side of Lehigh Street, so called, and terminating a distance of one hundred feet therefrom.

One track in the centre of Kneeland Street, from Federal Street to South Street.

[One track in the centre of South Street, from Kneeland Street to Summer Street.

One track in Summer Street, from South Street to the track of the Dorchester Avenue Railroad in Federal Street.

One track in the centre of Summer Street from South Street to a point terminating at a distance of thirty feet from the edge-stone in front of the New South Church, with a suitable turnout not exceeding one hundred feet in length connected therewith, and extending to the same distance from the said

edge-stone of the New South Church; which turnout shall be located in such position as the committee on paving and the superintendent of streets shall direct.<sup>1</sup>] First Location.  
March 24, 1858.

The stations to be as follows: One at the junction of Broadway and Dorchester Street; one at the stable in Broadway, between H and I Streets; one at the junction of P and Fourth Streets, with a suitable turnout at each station. The length of the turnouts at the respective stations to be determined by the committee on paving and the superintendent of streets, but in no instance to exceed two hundred feet in length.

The location of the turnout above specified in Federal Street, between the Federal Street Bridge and Kneeland Street, is granted upon the express condition that it shall not be laid down until the assent is given in writing by the Dorchester Avenue Railroad Company, and said assent filed with the city clerk, that the track of the said Dorchester Avenue Railroad in Federal Street shall be so changed as that, when the additional track for the turnout of the Broadway Railroad Company shall have been laid down in said Federal Street, the two tracks of the two companies shall occupy the centre of said street, and the distance from the outer rail of each track to the edge-stone of the sidewalk shall not be less than nine feet.

The location of the tracks, as above described, is granted with the further express condition that the whole work of laying down the said tracks shall be done under the direction and to the satisfaction of the superintendent of streets.

The form of rail to be used must be satisfactory to the committee on paving and the superintendent of streets, and be approved by them.

The location of the tracks, as above described, in Kneeland, South, and Summer Streets, is granted with the further express condition that the said track shall not be used by any other horse railroad corporation without an express vote of the board of aldermen.<sup>2</sup>

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<sup>1</sup> Rescinded August 20, 1861. See *Third Location*, following.

<sup>2</sup> By an order passed August 3, 1858, leave was granted to the Broadway

*Second Location.*

Second loca-  
tion.  
Dec. 31, 1859.

2. In addition to the location already granted to the Broadway Railroad Company to lay down tracks in several of the streets of the city of Boston, the said company shall have the right to lay down a single and independent track across the Federal Street Bridge; thence in Federal Street to Kneeland Street, there to connect with the present track of said Broadway Railroad Company; in Beach Street from Federal Street to Harrison Avenue; in Harrison Avenue from Beach to Essex Street; in Essex Street from Harrison Avenue to Washington Street, there to connect with the track of the Metropolitan Railroad Company. Permission is hereby granted to said Broadway Railroad Company to run cars over the track of the Metropolitan Railroad in Tremont Street from West Street to the space in front of Scollay's Building, thence to Cornhill; in Cornhill and in Washington Street from Cornhill to Essex Street, with the right to connect with the Dorchester Railway Company's track in Federal Street at Beach Street.

The location of the single and independent track across the Federal Street Bridge, and in Federal Street from the said bridge to Kneeland Street, is granted under the express proviso and condition to the location, that it shall not be laid down until the assent is given in writing by the Dorchester Railway Company, and said assent filed with the city clerk, that the track of the said Dorchester Railway Company, now located in said part of Federal Street, shall be so changed that, when the two tracks are laid down, they shall occupy the centre of the cartway or roadway, so that the distance shall be the same from the outer rail of each track to the edge-stone of the sidewalk on either side.

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Railroad Company to connect their track with the track of the Dorchester Avenue Railroad on Federal Street, by laying near the foot of Summer Street two tracks, one curving to the right and the other curving to the left, of such length, and laid in such manner, as the superintendent of streets shall direct. Rescinded August 20, 1861. See *Third Location*.

By an order passed November 22, 1859, leave was granted to the Broadway Railroad Company to construct a turnout on Fourth Street, near M. Street.

Also, under the further express proviso and condition, that said Broadway Railroad Company shall, after the rails are laid down, keep in good order and complete repair the whole of the roadway or cartway of the said Federal Street Bridge and Federal Street, and the streets in which an independent location is granted by this order, (viz: Beach Street, Harrison Avenue, and Essex Street,) at their own expense, and to the satisfaction of the superintendent of streets; and whenever the board of aldermen shall, from time to time, determine and order that any portion of the said streets through and in which the track is located, by the terms and under authority of this order, shall be repaved with what they shall deem to be the best of stone material; the whole expense of such paving shall be paid by the said Broadway Railroad Company; the work to be done by the superintendent of streets, under the authority of the board of aldermen.

Second location.  
Dec. 31, 1859.

Also, under the further express proviso and condition, that, in the construction of the said track, granite blocks, of such size as the superintendent of streets shall direct, shall be laid down inside and outside of each rail.

Also, under the further express proviso and condition, that, the whole work of laying down the track granted by this order shall be done under the direction and to the satisfaction of the committee on paving and superintendent of streets.

Also, that the form of rail to be used shall be satisfactory to the committee on paving and the superintendent of streets, and shall be approved by them. Also, that the work of laying down the tracks granted under the authority of this order shall not be commenced before the first day of April, eighteen hundred and sixty. Also, that said Broadway Railroad Company shall run no omnibuses in the city proper.

Also, under the further express proviso and condition, that the said Broadway Railroad Company shall accept this order of location, and agree to its several provisions and conditions, within twenty days of the date of its passage, otherwise it shall be null and void.<sup>1</sup>

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<sup>1</sup> Accepted by the Broadway Railroad Company, January 13, 1860.

Second Location.  
Dec. 31, 1859.

Also, under the further express proviso and condition, that the compensation to be paid by the Broadway Railroad Company to the Metropolitan Railroad Company, for running their cars over the track built by said Metropolitan Railroad Company, shall be such as the board of aldermen for the time being shall prescribe, if the two corporations do not mutually agree upon the terms.

The roadway or cartway mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on either side.

*Third Location.*

Third Location.  
Aug. 20, 1861.

3. In addition to the location already granted to the Broadway Railroad Company in the several streets of the city of Boston, the said company shall have the right to lay down a single track across the Federal Street Bridge, and thence in Federal Street to Beach Street, as the tracks are now laid down. Also, a single track in the centre of Beach Street to and across South Street; also, a double track in the centre of Beach Street, from South Street to Harrison Avenue; also, a single track from Harrison Avenue, on the southerly side of the roadway of Beach Street, (so as to leave a space of nine feet between the outer rail and the edge-stone of the northerly sidewalk of said Beach Street,) to Washington Street, with authority there to connect with, and to run over with their horses and cars, the track of the Metropolitan Railroad Company, in Washington Street to Boylston Street, in Boylston Street to Tremont Street; in Tremont Street from Boylston Street to Cornhill; in Cornhill to Washington Street; in Washington Street from Cornhill to Essex Street; in Essex Street from Washington Street to Harrison Avenue; in Harrison Avenue from Essex Street to the tracks of the said Broadway Railroad Company in Beach Street, as before mentioned.

The right to lay down and use the said tracks is under the express proviso and condition that the said Broadway Railroad Company shall take up their tracks now laid down in Summer Street and in that portion of South Street which lies northerly

of Beach Street, and put down the same in the streets in which they are hereby located, and shall repave said Summer Street and South Street, after the tracks shall have been taken up, in a manner satisfactory to the committee on paving and the superintendent of streets.

Third Location.  
Aug. 20, 1861.

Also, under the further express proviso and condition, that the said Broadway Railroad Company shall, at all times after the rails are laid down, keep in good order and complete repair, at their own expense, the whole of the roadway or cartway of Federal Street Bridge, Federal Street to Beach Street, and Beach Street.

Also, under the further express proviso and condition, that at the time the track is laid down in Beach Street, the whole of the roadway of that portion of said Beach Street, between Federal and Lincoln Streets, shall be repaved with the same material which now constitutes the pavement on said street, at the expense of said Broadway Railroad Company, and to be done under the supervision of the superintendent of streets, and to his satisfaction.

Also, under the further express proviso and condition, that said Broadway Railroad Company shall be subject to such restrictions as to the running of the cars upon their tracks as the board of aldermen from time to time shall decide that the public good shall require.

Also, under the further express proviso and condition, that in the construction of the track granted by this location, granite blocks of such dimensions as the superintendent of streets shall direct shall be laid down inside and outside of each rail, if the committee on paving and superintendent of streets shall so direct.

Also, under the further express proviso and condition, that the whole work of laying down the track granted by this order shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets. Also, that the form of the rail to be used shall be satisfactory to the committee on paving and superintendent of streets, and shall be approved by them.

Third location,  
Aug. 20, 1861,

The right to lay down these additional tracks is granted under the further express proviso and condition that the said Broadway Railroad Company shall make a correct return to the board of aldermen of the number of cars used upon the tracks of the said Broadway Railroad Company, and run, owned by them, and shall pay into the city treasury for each successive six months, ending with the months of December and June in each year, the sum of one dollar for each car run over the tracks of said Broadway Railroad, within ten days from the day said return was due; *provided*, that said company shall acquire no right not otherwise granted to it by the payment of said sum.

Also, under the further express proviso and condition, that the said Broadway Railroad Company shall accept<sup>1</sup> this order of location, and agree to its several provisions and conditions within ten days of the date of its passage, and file the same with the city clerk; otherwise it shall be null and void.

The roadway or cartway mentioned in this order is to include the whole of the space between the edge-stones supporting the sidewalks on either side.

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### CAMBRIDGE HORSE RAILROAD.<sup>2</sup>

#### SPECIAL ACTS.

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| 1. Corporators, location, &c.  | 7. Boston and Cambridge may purchase franchise, &c.           |
| 2. To be operated by horse power only.                                   | 8. Grades, gauge, and route, how determined.                  |
| 3. Corporation to keep streets in repair.                                | 9. This act not to prevent cities from taking up streets, &c. |
| 4. Penalty for obstructing corporation. Penalty if corporation obstruct. | 10. This act shall be void unless accepted, &c.               |
| 5. Capital stock. No shares to be issued at less than par.               | 11. To make annual returns, &c.                               |
| 6. Corporation may hold real estate.                                     | 12. Limited to fifty years.                                   |
|  | 13. Tracks may be removed.                                    |
|  | 14. Rates of fare.  |

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<sup>1</sup> Accepted by Broadway Railroad Company, August 24, 1861.

<sup>2</sup> For the act relating to the Union Railroad Company, and its connection with the Cambridge Railroad Company, see note *ante*, p. 526.

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| 15. Notice to abutters.<br>16. Act void unless accepted, &c.<br>17. Not to exceed, &c.<br>18. Bonds to be approved, &c.<br>19. Security of bonds, &c.<br>20. Sinking fund.<br>21. Trustees to make return to secretary, &c.<br>22. In case of failure trustees may petition to sell, &c.<br>23. Purchaser to manage railroad, and to file and publish certificate of corporate name, &c.<br>24. Award of commissioners shall be binding. | 25. Hancock Free Bridge corporation to take bonds.<br>26. Supreme judicial court to have equity powers.<br>27. Shares one hundred dollars each.<br>28. Bonds, when payable. Sinking fund.<br>29. Tracks, how to be laid. |
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*Locations.*

1. First Location, p. 527.
2. Second Location, p. 527.
3. Third Location, p. 531.
4. Fourth Location, p. 533.
5. Fifth Location, p. 534.

SPECIAL ACTS.

1. Gardiner G. Hubbard, Charles C. Little, and Isaac Livermore, their associates and successors, are hereby made a corporation by the name of the Cambridge Railroad Company, with power to construct, maintain, and use a railway or railways with convenient single or double tracks, from such point or points of the city of Cambridge upon and over the streets or highways therein, as shall be from time to time fixed and determined by vote of the mayor and aldermen of the said city of Cambridge, and assented to in writing by said corporation; and over the roads, estates, and bridges belonging to the Hancock Free Bridge corporation, to the intersection of the same with the streets of the city of Boston, as shall be from time to time fixed and determined by vote of the directors of the Hancock Free Bridge corporation, and assented to in writing by said corporation, paying said Hancock Free Bridge corporation such compensation, or tolls for the right of using said roads, estates, and bridges as may be mutually agreed upon, or if the respective corporations shall be unable to agree upon the compensation so as aforesaid to be paid, the supreme judicial court, upon the petition of either party, and upon notice to the other party shall appoint three commissioners, who shall, upon due notice to the parties interested, proceed to determine and fix the rate of compensation or toll.

Corporators,  
1853, 383, § 1.

Location.

Compensation  
to Hancock  
Free Bridge  
corporation.

If unable to  
agree, supreme  
judicial court  
to appoint three  
commissioners.

1853, 383, § 1.

And the award of said commissioners, or a major part of them, shall be binding upon the respective corporations interested therein, until they shall have been revised or altered by commissioners so appointed as aforesaid; but no such revision or alteration shall be made by such commissioners within one year after such decision and award shall have been made; and thence upon and over such streets and highways of the city of Boston, to such point or points in said city as may from time to time be fixed and determined by vote of the board of aldermen of the said city of Boston, and assented to in writing by said corporation; *provided, however*, that all tracks of said railroad shall be laid at such distances from the sidewalks in said cities as the mayor and aldermen thereof respectively shall, in their orders fixing the routes of said railroad, determine to be for the public safety and convenience.

Proviso.

The written assent of said corporation to any vote or votes of the mayor and aldermen of said cities, and of the directors of the Hancock Free Bridge corporation prescribing from time to time the routes of said road shall be filed with the respective clerks of said cities and corporations, and shall be taken and deemed to be locations thereof; and said corporation shall have power to fix from time to time such rates of compensation for transporting persons or property, as they may think expedient; and shall have all the powers and privileges, and be subject to all the duties, liabilities, and restrictions set forth in the forty-fourth chapter of the Revised Statutes.<sup>1</sup>

Operated by  
horse power  
only.  
Ibid. § 2.

2. Said tracks or roads shall be operated and used by said corporation with horse power only, and it shall not connect its track with any other railroad on which other power is used. The mayor and aldermen of said cities, respectively, shall have power at all times to make all such regulations as to the rate of speed and mode of use of said tracks as the public convenience and safety may require.

Corporation to  
keep streets in  
repair; liable,  
&c.

3. Said corporation shall maintain and keep in repair such portion of the streets and bridges respectively as shall be occu-

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<sup>1</sup> See Gen. Stats. c. 68.

pied by their tracks, and shall be liable for any loss or injury 1853, 383, § 3.  
 that any person may sustain, by reason of any carelessness, neglect, or misconduct of its agents and servants in the management, construction, or use of said tracks, road, or bridges; and in case any recovery shall be had against either of said cities or said bridge corporation, by reason of such defect or want of repair, said corporation shall be liable to pay the said cities and said bridge corporation, respectively, any sums thus recovered against them, together with all costs and reasonable expenditure incurred by said cities or said bridge corporation, or either of them, in the defence of any such suit or suits in which recovery shall be had, and shall not encumber any portion of the streets or bridges not occupied by the said road or tracks.

4. If any person shall wilfully and maliciously obstruct said corporation in the use of said road or tracks, or the passing of the cars or carriages of said corporation thereon, such person, and all who shall be aiding or abetting therein, shall be punished by a fine not exceeding five hundred dollars, or may be imprisoned in the common jail for a period not exceeding three months. Penalty for obstructing corporation. Ibid. § 4.

If said corporation or its agents or servants shall wilfully and maliciously obstruct any highway or the passing of any carriage over the same, such corporation shall be punished by a fine not exceeding five hundred dollars. Penalty if corporation obstruct. Ibid.

5. The capital stock of said corporation shall not exceed three hundred thousand dollars, to be divided into shares of fifty dollars each; and no shares shall be issued for a less sum, to be actually paid in on each than the par value of the shares which shall first be issued. Capital stock. Ibid. § 5. No shares less than par. Ibid.

6. Said corporation shall have power to purchase and hold such real estate within said cities or either of them, as may be convenient or necessary for the purposes and management of said road. May hold real estate. Ibid. § 6.

7. The cities of Boston and Cambridge, may at any time during the continuance of the charter of said corporation, and after the expiration of ten years from the opening of any part of Boston and Cambridge may purchase franchise, &c.

1853, 383, § 7. said road for use, purchase of said corporation all the franchise, property, rights, and furniture of said corporation, by paying them therefor such a sum as will reimburse to each person who may then be a stockholder therein, the par value of his stock, together with a net profit of ten per cent. per annum from the time of the transfer of said stock to him on the books of the corporation, deducting the dividends received by said stockholder thereon; and it is *further provided*, by act of eighteen hundred and fifty-four, chapter two hundred and five, that either of the cities of Boston and Cambridge, if it so elect, may purchase on the same terms and conditions, that part of the corporate property of this company which relates or lies within its own limits, paying therefor a proportional sum, to be ascertained by commissioners to be appointed by the supreme judicial court.

Grades, gauge,  
and route, how  
determined.  
1853, 383, § 8.

8. The said road shall be constructed and maintained in such form and manner, and upon such grade, and with such gauge,<sup>1</sup> as the mayor and aldermen of said cities, and the said bridge corporation respectively, may, in their votes fixing and determining the routes thereof as aforesaid, prescribe and direct; and whenever in the judgment of said railroad corporation, it shall be necessary to alter the grade of any street so occupied by it, such alteration may be made at the sole expense of said corporation; *provided*, the same shall be assented to by the mayor and aldermen of said cities respectively.

This act not to  
prevent cities  
from taking up  
streets, &c.  
Ibid. § 9.

9. Nothing in this shall be construed to prevent the city authorities of either of said cities or bridge corporation from entering upon and taking up any of the public streets or bridges traversed by said railroad, for the purpose for which they may now lawfully take up the same.

This act shall  
be void unless,  
&c.  
Ibid. § 10.

10. This act shall be void, so far as relates to the right to construct said road in either of said cities, unless the same shall be accepted by the city council<sup>2</sup> of said cities respectively, and unless the same shall be accepted by said corporation, and ten

<sup>1</sup> By Act of 1863, c. 100, § 1, it is required that the tracks of all horse railroads shall be of uniform gauge. See *ante*, pp. 501, 502.

<sup>2</sup> This act was accepted by the city council of Boston May 18, 1854, and the route in the city of Boston located December 4, of the same year, by the mayor and aldermen.

per cent. of the capital stock thereof paid in within two years of 1853, 383, § 10.  
the passage of this act.

11. Said corporation shall be deemed a railroad corporation, To make annual  
so far as to be subject to make such annual returns to the legis- returns, &c.  
lature as are or may be prescribed by law, but not to the other Ibid. § 11.  
general provisions of law in relation to railroad corporations.<sup>1</sup> See note, p. 485.  
See also G. S.  
c. 63, p. 139.

12. The existence of said corporation is hereby limited to Limited to fifty  
the period of fifty years from the passage hereof. years.  
1853, 383, § 12.

13. At any time after the expiration of one year from the opening for use of the tracks of said railroad, in any street in  
which the same may be located, as provided by its charter, the  
mayor and aldermen of the cities of Boston and Cambridge,  
respectively, may, by vote of the major part thereof, determine  
as to so much of said track as is located within the limits of their  
respective cities, that the same, or any part thereof, be discon-  
tinued; and thereupon the location shall be deemed to be re-  
voked, and the tracks of said railroad shall forthwith be taken  
up and removed, in conformity with such vote or order of said  
mayor and aldermen; *provided*, that such taking up and re- Tracks may be  
moved. removed.  
1854, 205, § 1

14. The rates of fare upon the said railroad, between any Fare.  
two points in the city of Boston, shall never exceed five cents Ibid. § 2.  
for each passenger, unless with the assent of the mayor and  
aldermen of said city.

15. Notice to abutters on streets in which it may be proposed Notice to abut-  
to lay the tracks of said corporation shall be given, by the pub- ters.  
lication, in one or more newspapers published in the cities of Ibid. § 3.  
Boston and Cambridge, of an order of notice from the mayor  
and aldermen of said respective cities, fourteen days at least  
prior to the location of any such tracks.

16. This act shall be void and of no effect, unless the same Act void un-  
shall be accepted by the city council of the cities of Boston<sup>2</sup> and less, &c.  
Cambridge, respectively, within one year from the date hereof.<sup>3</sup> Ibid. § 5.

<sup>1</sup> By the Act of 1861, c. 120, § 1, horse railroad corporations are required to make returns, &c. See note *ante*, p. 485.

<sup>2</sup> This act was accepted by the city council of Boston May 18, 1854, and by the city council of Cambridge, May, 1854.

<sup>3</sup> For the provisions of § 4 of the above Act, see *ante*, § 7.

May issue  
bonds not to  
exceed capital  
stock paid in.  
1855, 24, § 1.

17. The Cambridge Railroad Company are hereby authorized to issue bonds, for the purpose of constructing their road, or for money which it may borrow for any purpose sanctioned by law ; but the bonds so issued shall not exceed the amount of capital stock paid in by the stockholders of said company. Such bonds may be issued in sums of not less than five hundred dollars each, payable in twenty years from their date, with interest at the rate of six per cent., payable semi-annually.

Bonds to be  
approved and  
certified.  
Ibid. § 2.

18. Such bonds shall be approved by a majority of the finance committee of said corporation, who shall certify that each of said bonds is properly issued, and recorded upon the books of the corporation. All bonds and notes which shall be issued by said corporation shall be binding and collectable in law, notwithstanding such bonds or notes may be negotiated and sold by such corporation, or their agents, at less than par.

Security of  
bonds, &c.  
Ibid. § 3.

19. Said bonds shall be secured by a conveyance of the corporate property to three trustees, by a suitable instrument to be prepared for that purpose, as a pledge or mortgage to secure the performance of the conditions of said bonds.

Sinking fund.  
Ibid. § 4.

20. The said corporation shall, semi-annually, pay to said trustees a sum equal to two per cent. on the amount of said bonds, for the purpose of creating a sinking fund. Said trustees shall have the care and management of all the moneys, funds, and securities at any time belonging to said sinking fund ; and they shall from time to time, at their discretion, invest the moneys on hand securely, and so that they shall be productive, and the same may be invested in the bonds of the Cambridge Railroad Company, secured as aforesaid, or loaned on interest to any county, city, or town, or any bank of this commonwealth, or the same may be loaned on interest, well secured by a first mortgage of real estate to an amount not exceeding one half the value thereof, or by pledge of the scrip or stock of any of the New England States, or of any city, county, or town as aforesaid, or of any bank incorporated by this commonwealth ; and the said fund, together with the accru-

Trustees to  
have manage-  
ment and care  
of funds, &c.  
Ibid.

ing interest, shall constitute a sinking fund for the payment and redemption of said bonds.<sup>1</sup> 1855, 24, § 4.

21. Said trustees shall make an annual return to the secretary of this commonwealth of the whole amount of bonds issued by said corporation, and secured by mortgage as aforesaid, and the whole amount by them received, and the investments made thereof. Trustees to make return to secretary, &c. Ibid. § 5.

22. In case of failure by the said corporation in the performance of any of the conditions of said bonds, the trustees, shall petition the supreme judicial court for leave to sell the property conveyed to them as aforesaid; and thereupon the same shall be sold in such way and manner as the court may order; and after the payment of all costs and expenses there shall be paid into the sinking fund a sum which, added to the amount then on hand, shall equal the amount of said bonds, and any interest thereon due and unpaid, and the remainder thereof paid to said corporation. In case of failure, trustees may petition to sell, &c. Ibid. § 6.

23. The purchaser or purchasers at such sale may associate themselves together, under any name by them assumed, for the purpose of managing said railroad, and they shall, together with their successors and assigns, be and remain a body corporate under the name assumed by them; but before they shall commence business, they shall make a certificate, setting forth their corporate name, the amount of capital actually paid in, and the par value of the shares; which certificate shall be signed and sworn to by the president, treasurer, and a majority of the directors of said company, published three times, in two daily Boston papers, and filed with the secretary of the commonwealth; and when so organized they shall become a corporation, with like powers and privileges, and subject to all the duties and restrictions set forth in the act incorporating the Cambridge Railroad. Purchaser to manage railroad and to file and publish certificate of corporate name. Ibid. § 7.

24. The award of the commissioners to be appointed under the provisions of the first section of the Act incorporating the Award of commissioners shall be binding. Ibid. § 8.

<sup>1</sup> By Act of 1863, c. 101, the trustees are authorized "to make investments of the sinking fund, in the public bonds and stock of the United States, and in any securities in which saving banks of the commonwealth are authorized to invest."

1855, 24, § 8. Cambridge Railroad Company, to determine and fix the rate of compensation and toll to be paid to the Hancock Free Bridge corporation, shall be binding upon each of said corporations, and shall not be revised or altered except by the agreement of each of said parties.

Hancock Free Bridge corporation to take bonds. Ibid. § 9. 25. Said Hancock Free Bridge corporation shall receive in satisfaction of the compensation or tolls that may be awarded by said commissioners, bonds of said Cambridge Railroad Company, secured in the manner herein provided.

Supreme judicial court to have equity powers. Ibid. § 10. 26. The supreme judicial court shall have full equity powers on all matters relating to this act or the acts to which it is in addition.

Shares one hundred dollars each. Ibid. § 11. 27. The capital stock of the Cambridge Railroad Company shall be divided into shares of one hundred dollars each, and the time within which ten per cent. of the capital stock is to be paid is hereby extended two years.

Bonds, when payable. 1855, 368, § 1. Sinking fund. 28. The bonds authorized to be issued by the Cambridge Railroad Company may be made payable in twenty-five years from their date, and the sum to be paid into the sinking fund shall be equal to two per cent. per annum, to be paid semi-annually.

Tracks, how to be laid. Ibid. § 2. 29. All the tracks of the Cambridge Railroad shall be laid at such distances from the sidewalk, in the cities of Cambridge and Boston, as the mayor and aldermen of said cities, respectively, by their orders fixing the routes of said railroad, determine to be for the public safety and convenience.<sup>1</sup>

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Union Railway Company. 1855, 338. <sup>1</sup> 1. John C. Stiles, Moses M. Rice, and T. Russell Jencks, their associates and assigns, are hereby made a corporation, by the name of the Union Railway Company, for the purpose of leasing the Cambridge Railroad and any other connecting road; with all the powers and privileges, and subject to all the duties, liabilities, and restrictions set forth in the forty-fourth chapter of the Revised Statutes; and they shall be deemed a railroad company, so far as to be subject to make such annual returns to the legislature as are or may be prescribed by law, but not to the other general provisions of law relating to railroads.

See G. S. c. 68. 2. Said company are hereby authorized to contract with the Cambridge Railroad Company, or any that may enter upon or connect with said Cambridge Railroad, to do and perform all the transportation of persons and freight upon and over such railroads, upon such terms and conditions as may be mutually agreed upon by the parties.

*First Location.*

Commencing at the intersection of the West Boston Bridge with Cambridge Street, thence with a double track through Cambridge Street from the Bridge to Chambers Street, [thence with a single track through Cambridge Street to Green Street, and Green Street to Bowdoin Square,<sup>1</sup>] across Bowdoin Square to Cambridge Street, thence down Cambridge Street to Chambers Street, with suitable turnouts in Bowdoin Square.

First location.  
Dec. 4, 1854.

In the streets where the double track is laid, the outer rail of each track shall not be less than nine feet six inches distant from the curb-stone; and where a single track is laid, the outer rail shall be not less than twelve feet and three inches from the opposite curb-stone, excepting the necessary curves at the corners of the street.

The gauge of the tracks shall be four feet eight and a half inches in width; the rails of the same size and pattern as those now in use on the Third Avenue Railroad, in New York city. The method of construction to be similar to that adopted on the railroads in the city of New York, and the whole work to be done subject to the directions and to the satisfaction of the board of mayor and aldermen and the superintendent of streets.

*Second Location.*

In addition to the rights heretofore granted to the Cambridge Railroad Company to lay down tracks in the streets of the city

Second location.  
July 25, 1860.

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3. The mayor and aldermen of the cities of Cambridge and Boston, respectively, shall have power, at all times, to make all such regulations as to the rate of speed and manner of running the trains as the public convenience and safety may require. 1855, 338.

4. The capital stock of said corporation shall not exceed two hundred thousand dollars, to be divided into shares of one hundred dollars each; and no share of the capital stock shall be issued for a less sum, to be actually paid in on each, than the par of those first issued. Said company may hold such real and personal estate as may be necessary or convenient for the purposes aforesaid.

<sup>1</sup> Revoked June 9, 1859, but restored October 29, 1862. See *Sixth Location*, following.

Second Location.  
July 25, 1860.

of Boston, the said Cambridge Railroad Company shall have the right to lay down a single track in the centre of Leverett Street from Cragie's Bridge, so called, to Minot Street; [a single track in the centre of Minot Street from Leverett Street to Lowell Street; <sup>1</sup>] a single track in the centre of Brighton Street from Leverett Street to Lowell Street! [two tracks in the centre of Lowell Street; <sup>2</sup>] [two tracks across Causeway Street from Lowell Street to Merrimac Street; two tracks in the centre of Merrimac Street from Causeway Street to Chardon Street; <sup>3</sup>] [a single track in the centre of Chardon Street to the northerly corner of Hawkins Street, with a turnout in said Chardon Street not exceeding two hundred feet in length northerly of said northerly corner of Hawkins Street.<sup>4</sup>]

Also, an additional track in Cambridge Street from Chambers Street to the southeasterly corner of Ridgway Lane, there to form a connection with the track now laid down upon said street. This track when laid down upon said Cambridge Street, with the one already down upon said street, to be placed in such a position as to occupy the centre of the roadway between Chambers Street and the northwesterly corner of Lynde Street; and between the said corner of Lynde Street and Ridgway Lane, the two tracks shall be placed in such position as to leave a clear space of nine feet between the southerly rail and the southerly edge-stone. The single track now laid down upon said Cambridge Street, between Ridgway Lane and Temple Street, to be changed to such a position in the roadway as the committee on paving and superintendent of streets shall direct.

The right to lay down these additional tracks is granted under the express proviso and condition to this location, that said Cambridge Railroad Company shall at the time of laying down of the tracks in Brighton, Lowell, and Merrimac Streets cause the said streets to be wholly repaved with the same material which now forms the pavement upon said streets; also that the

<sup>1</sup> Rescinded October 29, 1862. See *Sixth Location*, following.

<sup>2</sup> Altered October 29, 1862. See *Sixth Location*, following.

<sup>3</sup> Rescinded November 22, 1860. See *Third Location*, following.

<sup>4</sup> Rescinded June 26, 1861. See *Fourth Location*, following.

pavement now down on Cambridge Street between Chambers Street and Temple Street, shall be taken up and replaced with "trap-rock blocks."

Second location.  
July 25, 1860.

Also, under the further express proviso and condition to this location, that said Cambridge Railroad Company shall, at all times after the rails are laid down, keep in good order and complete repair, the whole of the roadway or cartway of the streets in which the tracks are located by this order; also the whole of the roadway or cartway in which the tracks of the said Cambridge Railroad are now located in Cambridge Street and Bowdoin Square, at their own expense and to the satisfaction of the superintendent of streets; and whenever the board of aldermen shall, from time to time, determine and order that any of the said streets through and in which the tracks are located, by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material, the whole expense of such paving shall be paid by the said Cambridge Railroad Company, the work to be done by the superintendent of streets, under the authority of the board of aldermen.

[Also, under the further express proviso and condition, that before the tracks granted under the authority of this order of location shall be laid down, the said Cambridge Railroad Company shall contribute to the city of Boston the whole expense of the widening of Merrimac Street at the northeasterly corner of said Merrimac Street and Causeway Street, whereby land will be taken of William Washburn for that purpose by the board of aldermen in conformity with a plan of said widening made by James Slade, city engineer, and dated July eleventh, eighteen hundred and sixty.]<sup>1</sup>

[Also, under the further express proviso and condition, that all the cars now or which shall hereafter be run by the said Cambridge Railroad Company, or the Union Railway Company, the lessees of said Cambridge Railroad Company, to and from the city of Boston and East Cambridge, together with the "North Avenue" and "Porter's Hotel" and West Cambridge cars, including also all cars now or which shall hereafter be run through Cambridge Street, in Cambridge, to and from the city of Boston, shall be run to and from the city of Boston only over the tracks granted under the authority of this order of location in Leverett, Minot, Brighton, Lowell, Causeway, Merrimac, and Chardon Streets, and not over the Hancock Free Bridge (formerly known as the West

<sup>1</sup> Rescinded November 22, 1860. See *Third Location*, post. pp. 532, 533.

Second loca-  
tion,  
July 25, 1860.

Boston Bridge), and through Cambridge Street in the city of Boston over the tracks granted under the authority of an order of location, dated December 4, 1854.]<sup>1</sup>

Also, under the further express proviso and condition, that the whole work of laying down the tracks granted under the authority of this order of location, shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and that the form of rail shall be satisfactory to the committee on paving and the superintendent of streets, and shall be approved by them. Also, that the repaving of the whole of Brighton, Lowell, and Merrimac Streets; also the part of Cambridge Street specified in this order, shall be at such "crown" as the superintendent of streets shall determine, and the said work to be done under his supervision and direction.

Also, under the further express proviso and condition, that in the construction of the said tracks, granite blocks of such dimensions as the superintendent of streets shall direct, shall be laid down inside and outside of each rail.

Also, under the further express proviso and condition, that said Cambridge Railroad Company shall remove the rails now down upon the tracks of said company in Cambridge Street and Bowdoin Square, and replace the same, with a pattern of rails to be approved by the committee on paving and the superintendent of streets.

Also, under the further express proviso and condition to the location granted under the authority of this order, that said Cambridge Railroad Company shall make a correct return to the board of aldermen of the number of cars used upon the location granted by this order, and shall pay into the treasury for each successive six months ending with the months of December and June in each year, the sum of fifteen dollars for each car run into this city over Cragie's Bridge,<sup>2</sup> within ten days from the day said return was due; *provided*, that said sum may be at any time increased or decreased by the board of aldermen whenever

<sup>1</sup> Rescinded August 28, 1861. See *Fifth Location*, post. p. 534.

<sup>2</sup> Altered August 28, 1861. See *post.* p. 534.

it may see fit; and *provided, further*, that said company shall acquire no rights not otherwise granted to it by the payment of said sum, and said company shall accept this said order of location and agree to comply with its several provisions and conditions in writing within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk, otherwise it shall be null and void.<sup>1</sup>

Also, under the further express proviso and condition to the location granted under the authority of this order, that said Cambridge Railroad Company shall provide such reasonable accommodations for passengers waiting to take the cars, as the board of aldermen shall from time to time require.

The roadway or cartway mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on both sides of the street.

### *Third Location.*

3. In addition to the rights heretofore granted to the Cambridge Railroad Company to lay down tracks in several of the streets of the city of Boston, the said Cambridge Railroad Company shall have the right to lay down two tracks in the centre of Causeway Street from Lowell Street to Portland Street; a single track in the centre of Portland Street from Causeway Street to Merrimac Street; [a single track in the centre of Lancaster Street from Causeway Street to Merrimac Street; a single track in the centre of Merrimac Street from Lancaster Street to Chardon Street.]<sup>2</sup>

The right to lay down these additional tracks is under the express proviso and condition, that the board of aldermen reserve the right to permit any other horse railroad company to run cars over the tracks located by authority of this order, for such compensation, to be paid to the Cambridge Railroad Company, and upon such terms and conditions as the board of aldermen

<sup>1</sup> Accepted by Cambridge Railroad Company, July 28, 1860.

<sup>2</sup> Rescinded October 29, 1862. See *Sixth Location*, post. p. 538.

Third location.  
Nov. 22, 1860.

for the time being shall determine and prescribe. Also, that the board of aldermen for the time being shall have the right at all times to regulate which way the cars shall pass over the tracks authorized to be located by the terms of this order and that of July twenty-five, eighteen hundred and sixty.

Also, under the further express proviso and condition, that said Cambridge Railroad Company shall, at the time of laying down the tracks granted by authority of this order, cause the streets in which said tracks are located, to be wholly repaved with the same material which now forms the pavement upon said streets, in a manner satisfactory to the superintendent of streets.

See *ante*, p. 529.

Also, under the further express proviso and condition, that said Cambridge Railroad Company agree that the provisions and conditions contained in the order of location for the Cambridge Railroad of July twenty-five, eighteen hundred and sixty, in relation to keeping at all times the whole of the roadway or cartway in complete repair and the repaving of it, the running of the cars from certain parts of Cambridge, &c., the manner in which the work of laying down the tracks shall be done, the form of rail and the size of the granite blocks to be used, and the sum to be paid into the city treasury semi-annually, shall be complied with in their full force and effect in the construction of the tracks granted under authority of this order.

Also, under the further express proviso and condition to the location of tracks granted under authority of this order, that said Cambridge Railroad Company shall accept this order of location and agree to comply with its several provisions and conditions in writing within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk, otherwise it shall be null and void.<sup>1</sup>

See *ante*, p. 529.

*Ordered*, That so much of the order passed July twenty-five, eighteen hundred and sixty, in relation to the location of additional tracks of the Cambridge Railroad Company, as authorizes said company to lay down two tracks across Causeway Street to Merrimac Street, and two tracks in Merrimac Street

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<sup>1</sup> Accepted by Cambridge Railroad Company, December 1, 1860.

from Causeway Street to Chardon Street; and the proviso and condition, that before the tracks granted under authority of said order of location are laid down, the whole expense of widening Merrimac Street at the northeasterly corner of said Merrimac Street and Causeway Street shall be contributed by the said Cambridge Railroad Company, be and the same hereby is rescinded and declared null and void.

Third location.  
Nov. 22, 1860.

*Fourth Location.*

4. In addition to the rights heretofore granted to the Cambridge Railroad Company to lay down tracks in the streets of the city of Boston, the right is hereby granted to said Cambridge Railroad Company to extend their single track from its present terminus in Chardon Street at the northerly corner of Hawkins Street, southerly up Chardon Street a distance of ninety-five feet, with authority to construct a turnout fifty-two feet in length alongside of said extension.

Fourth location.  
June 26, 1861.

The right to lay down the extension of track authorized by this order of location is granted under the express proviso and condition that said Cambridge Railroad Company agree that the provisions and conditions contained in the order of location granted to the said Cambridge Railroad Company July twenty-five, eighteen hundred and sixty, in relation, to keeping at all times the whole of the roadway or cartway in complete repair and the repaving of it, the running of the cars from certain parts of Cambridge, the manner in which the work of laying down the tracks shall be done, the form of rail and the size of granite blocks to be used, and the sum to be paid into the city treasury semi-annually, shall be complied with in their full force and effect in the construction of the extension of track and turnout authorized by this order of location.

See ante, p. 529.

Also, under the further express proviso and condition to this location, that in all cases wherever said Cambridge Railroad corporation are under any obligation or condition to keep in good order and repair the whole or any part of the streets of this city, and, after notice given from the superintendent of streets by direction of the committee on paving, or this

Fourth location.  
June 26, 1861.

board, to repair the same, said corporation shall, twenty-four hours after such notice, have neglected to attend thereunto, said repairs shall be made by the said superintendent, and the expense thereof paid by said corporation, and said corporation shall be further liable to reimburse to the said city of Boston all damages that may be recovered against the same in consequence of the state of any street or any part thereof, the keeping whereof in good repair or order is a condition of any location granted by this board.

Also, under the further express proviso and condition to the location of the extension of track and turnout granted under the authority of this order, that said Cambridge Railroad Company shall accept this order of location and agree to comply with its several provisions and conditions in writing within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk, otherwise it shall be null and void.<sup>1</sup>

*Ordered*, That so much of the order of location passed July twenty-five, eighteen hundred and sixty, as authorizes the Cambridge Railroad Company to lay down a turnout in Chardon Street northerly of Hawkins Street, be and the same is hereby rescinded and declared null and void.

#### *Fifth Location.*

Fifth location.  
Aug. 28, 1861.

See *ante*, p. 529.

5. So much of the location granted to the Cambridge Railroad Company, approved July twenty-five, eighteen hundred and sixty, as provides that the North Avenue, Porter's Hotel, West Cambridge, and other cars shall be run over the tracks granted under the order of said location, be and the same is hereby rescinded upon the following provisions and conditions being agreed to in writing and filed with the city clerk, viz :

That the provision and condition in said order of location of the Cambridge Railroad Company of July twenty-five, eighteen hundred and sixty, which provides for a semi-annual return of the cars upon the tracks over Craigie's Bridge, and the payment into the city treasury, semi-annually, of the sum of fifteen dol-

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<sup>1</sup> Accepted by Cambridge Railroad Company, June 26, 1861.

lars for each car, be altered and amended so that the returns Fifth location.  
Aug. 28, 1861. to be made each year shall embrace the entire number of cars run into the city of Boston over both routes of said Cambridge Railroad Company, viz: Over the Hancock Free Bridge and Craigie's Bridge, so called, and said Cambridge Railroad Company shall pay into the city treasury, semi-annually, as therein set forth, the sum of fifteen dollars on each of one half of the number of cars as before mentioned, upon the terms and conditions also set forth in said provision and condition.<sup>1</sup>

*Sixth Location.*

*Ordered,* That so much of the order of the board of aldermen Sixth location.  
Oct. 29, 1862. passed June seven, eighteen hundred and fifty-nine, and approved by the mayor June eight, eighteen hundred and fifty-nine, revoking a portion of the location granted to the Cambridge Railroad Company December four, eighteen hundred and fifty- See ante, p. 527. four, to wit, in Chambers and that portion of Green Street between Leverett and Chambers Streets on which rails had not already been laid, be, and the same is hereby rescinded, and declared null and void, and said corporation are hereby authorized to lay a single track through Chambers Street to Green Street, and through Green Street to Leverett Street, with suitable turnouts and curves in Cambridge Street and in Bowdoin Square to Green Street, under certain provisions and conditions, as hereinafter set forth.

In addition to the rights heretofore granted to the Cambridge Railroad Company, to lay down tracks in the city of Boston, the said corporation shall have the right to lay down a single track in the centre of Leverett Street, from the track of the Suffolk Railroad in Leverett Street, to Minot Street, there connecting with their track as now laid down; also to lay down a single track in the centre of Chardon Street, from the termination of their main track in said street to Bowdoin Square, there connecting by a curve with the track of the Suffolk Railroad in Green Street.

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<sup>1</sup> Accepted by Cambridge Railroad Company, November 4, 1862.

Sixth location.  
Oct. 29, 1862.

The right to lay down this additional track is under the express proviso and condition that the Suffolk Railroad Company shall have the right to use the tracks of the Cambridge Railroad in Chardon Street, now or hereafter built, and in Portland and Causeway Streets, free of expense, and that they alone shall be entitled forever to receive compensation for all cars using the said tracks in Chardon, Portland, and Causeway Streets, except for those run from the city of Cambridge, and that said Suffolk Railroad Company shall further have the right to run a return route from the railroad stations in the northerly part of the city, and to run a Boylston Street route over the tracks of the Cambridge Railroad through Green, Chambers, and Cambridge Streets and Bowdoin Square, free of expense, and to receive compensation for all cars using the said route, except those run from the city of Cambridge; and also that the Cambridge Railroad Company shall issue checks to be sold for five cents in their cars and to their passengers only, good to Boylston Street and return, or to the railroad stations in the northerly part of the city and return in any cars using the Chardon, Causeway, or Green Street tracks, and also that the Cambridge Railroad Company shall issue tickets good from any point on their road in Boston to Boylston Street or to the railroad stations in the northerly part of the city in any cars using the Chardon, Causeway, or Green Street tracks, for five cents each.

Also, under the further express proviso and condition to this location, that said corporation shall, at all times after the rails are laid down, keep in good order and complete repair the whole of that part of the roadway or cartway of the streets in which the said tracks are laid, to wit: Green, Chambers, Leverett, and Chardon Streets, and Bowdoin Square, at their own expense, and to the satisfaction of the superintendent of streets; and whenever the board of aldermen shall, from time to time, determine and order that any of the said streets as above mentioned, through and in which the tracks are located, by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material, the whole expense of such paving shall be paid by the said Cam-

bridge Railroad Company, the work to be done by the superintendent of streets, under the authority of the board of aldermen

Sixth location.  
Oct. 29, 1862.

Also, under the further express proviso and condition, that the board of aldermen reserve the right to permit the Metropolitan, Broadway, and Middlesex Railroad Companies to run cars over the tracks located in said streets, for such compensation to be paid to the railroad company entitled to receive the same, as may be mutually agreed upon, or in case of disagreement, the compensation to be thus paid shall be determined according to law; *provided, however*, that all railroad companies using the tracks located under this order shall receive the checks and tickets to be issued by the Cambridge Railroad Company as aforesaid, good on the cars using the Chardon, Causeway, or Green Street tracks and running to and from the railroad stations at the northerly part of the city, and to and from Boylston Street, and that said checks and tickets shall be redeemed by the Cambridge Railroad Company, from the railroad company receiving the same, at the rate of five cents for the checks and of three cents for the tickets, each.

Also, under the express proviso and condition, that if the Suffolk Railroad Company shall neglect to construct the tracks in Green and Leverett Streets, as authorized by their location, before July one, eighteen hundred and sixty-three, the Cambridge Railroad Company may construct the same for the Suffolk Railroad Company, in which case the ownership of said tracks and the control thereof shall be in the Cambridge Railroad Company till the Suffolk Railroad Company shall pay for the same; *provided, however*, that if said Cambridge Railroad Company shall build said tracks, the same shall be constructed in accordance with the provisos and conditions under which the Suffolk Railroad Company are entitled to construct the same by their location granted in October, eighteen hundred and sixty-two.

See post. Suffolk Railroad.  
Sixth location.

Also, under the further express proviso and condition, that the form of the rail to be used, and the whole work of laying down the rails in said streets, shall be done under the direction and to the satisfaction of the superintendent of streets and committee on paving.

See ante, p. 528.

Sixth location.  
Oct. 29, 1862.

Also, under the further express proviso and condition, that said Cambridge Railroad Company shall take up their single tracks now laid down in the centre of Minot Street from Leverett to Lowell Street; one of the tracks in Lowell Street, to wit: the track connecting with the track in Minot Street. Also, the single track in the centre of Lancaster Street from Causeway to Merrimac Street, and the single track in the centre of Merrimac Street from Lancaster to Chardon Street; and the said streets shall be repaved after the said tracks have been removed, and put in good order and condition, to the satisfaction of the superintendent of streets and committee on paving.

See *ante*, pp.  
528, 531.

Also, under the further express proviso and condition, that said Cambridge Railroad Company shall at their own expense, whenever required by the committee on paving, remove the rails now down upon the tracks of said company in Cambridge Street and Bowdoin Square, and replace the same by the pattern of rails to be approved by the committee on paving and the superintendent of streets.

Also, under the further express proviso and condition, that said company shall accept this order of location, and agree to comply with its several provisions and conditions, in writing, within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk, otherwise it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on both sides of the streets.

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<sup>1</sup> Accepted by Cambridge Railroad Company, November 4, 1862.

DORCHESTER RAILWAY.<sup>1</sup>

## STATUTES.

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| <ol style="list-style-type: none"> <li>1. Power to construct railway. Location. Provisos. Rates of fare.</li> <li>2. Horse power only to be used.</li> <li>3. Streets and bridges to be kept in repair.</li> <li>4. Penalty for obstructing tracks, &amp;c.</li> <li>5. Capital stock not to exceed three hundred thousand dollars.</li> <li>6. May hold real estate.</li> <li>7. City or town may purchase franchise.</li> <li>8. Location may be revoked.</li> <li>9. Grade and gauge of road.</li> <li>10. Not to be constructed until, &amp;c.</li> <li>11. Other corporation may connect with.</li> <li>12. Act not to prevent authorities from taking up streets.</li> <li>13. Act to be void unless, &amp;c.</li> <li>14. Returns.</li> <li>15. Limitation of act.</li> <li>16. Road-bed not occupied not to be repaired by company.</li> <li>17. Liable for defects, &amp;c., in roads occupied by tracks.</li> <li>18. Extension of railroad authorized.</li> <li>19. Tracks, how to be laid.</li> <li>20. Powers conferred by former acts continued.</li> </ol> | <ol style="list-style-type: none"> <li>21. Company authorized to issue bonds not to exceed amount of capital.</li> <li>22. Bonds to be approved.</li> <li>23. Security of bonds.</li> <li>24. Sinking fund and trustees of.</li> <li>25. Trustees to make annual returns.</li> <li>26. In case of failure, &amp;c., supreme judicial court may order sale.</li> <li>27. Purchasers may organize as a corporation, &amp;c.</li> <li>28. Equity powers of supreme judicial court.</li> <li>29. Act not to take effect unless accepted, &amp;c.</li> <li>30. Prior organization of the company confirmed.</li> <li>31. Purchase of the Dorchester extension sanctioned.</li> <li>32. May sell or lease its road and franchise; contract to be sanctioned by a majority in interest of stockholders; company purchasing may hold real estate in Dorchester.</li> </ol> |
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*Locations.*

1. First Location, p. 549.
2. Second Location, p. 550.
3. Third Location, p. 551.

## SPECIAL ACTS.

1. Cheever Newhall, Edward King, John J. May, their associates and successors, are hereby made a corporation, by the name of "The Dorchester Avenue Railroad Company," with

Corporators.  
1854, 435, § 1.

<sup>1</sup> The Dorchester Railway Company is the successor of the Dorchester Avenue Railroad Company, and the several acts of incorporation in the text were granted to the last-named company. By the Act of 1856, c. 279, §§ 6, 7, it was enacted that in case of failure to do certain acts, the supreme judicial court might order a sale of the franchise, &c., and the purchasers might

Power to construct railway.  
1854, 435, § 1.

Location.

Provisos.

Rates of fare.

power to construct, maintain, and use a railway or railways, with convenient single or double tracks, from a point near the Lower Mill, so called, in the town of Dorchester, upon and over the way or street heretofore known by the name of the Dorchester Turnpike, or Turnpike Street, to the line of the city of Boston, and thence upon and over such street in South Boston, as the board of aldermen of the city of Boston may determine, upon and over the North Free Bridge, and upon and over Sea and Broad Streets in the direction of State Street in said Boston, as shall from time to time be fixed and determined by vote of the board of aldermen of said city, and assented to in writing by said railroad corporation; *provided*, that all tracks of said railroad shall be laid at such distance from the sidewalks in the city of Boston and town of Dorchester, as the board of aldermen of said city, and the selectmen of said town, respectively, shall determine to be for the public safety and convenience, and the written assent of said corporation to any vote of the board of aldermen of said city, or of the selectmen of the said town, respectively, prescribing from time to time the route of said railroad, shall be filed with the respective clerks of said city and town, and shall be taken and deemed locations thereof; and *provided*, that before the location or construction of any track in any street or highway, the board of aldermen of said city, and the selectmen of said town, respectively, shall give notice to the abutters thereon, by the publication in one or more newspapers, published in the said city of Boston and in the county of Norfolk, of an order of notice from said board of aldermen and selectmen, respectively, fourteen days at least, prior to the hearing upon the location of any part of such track, that the said abutters may show cause, if any there be, why said track should not be so located and constructed; and the said railroad corporation shall have power to fix, from time to time, such rates of compensation for

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assume, and organize under any name they might elect. In pursuance of the provisions of this act, by decree of said court, in January, 1858, a sale was made to parties, who took the name of the Dorchester Railway Company. See the Act of 1856, c. 279, *post.* pp. 546-548.

transporting persons or property thereon, as they may deem expedient; *provided*, that the rates of fare between any two stations in the city of Boston shall never exceed five cents for each passage of a person, unless, with the assent of the board of aldermen of said city; and the said railroad corporation shall be subject to all the duties, restrictions, and liabilities, and entitled to all the rights and privileges prescribed by the forty-fourth chapter of the Revised Statutes.<sup>1</sup>

2. The said tracks or railroad shall be operated and used by said corporation with horse power only, and it shall not connect its track with any other railroad on which other power is used. The board of aldermen of said city, and the selectmen of said town, respectively, shall have power at all times, to make all such regulations as to the rate of speed, and mode of use of said tracks, as the public convenience and safety may require.

3. Said corporation shall maintain and keep in repair such portions of the streets and bridges in the city of Boston, as shall be occupied by their tracks; and they shall also keep the whole of the bed of any road in the town of Dorchester, which shall be thus occupied, in such repair, that the public travel or teaming over said Dorchester Turnpike, within the limits of the town of Dorchester, shall be well accommodated while said railroad corporation may continue to occupy any part of said turnpike under this act. And the said railroad corporation, shall be liable for any loss or injuries that any person may sustain by reason of any carelessness, neglect, or misconduct of its agents or servants, in the management, construction, or use of said tracks or railroad, and in case any recovery shall be had against the said city or town, by reason of such defect or want of repair in, or use of, their said tracks or roads, said corporation shall be liable to pay to said city and town, respectively, any sums thus recovered against them, together with all costs and reasonable expenditures incurred by said city or town, or either of them, in the defence of any such suit or suits, in which such recovery shall be had; and said corporation shall

Horse power  
only to be used  
Ibid. § 2.

Streets and  
bridges to be  
kept in repair  
Ibid. § 3.

<sup>1</sup> See Gen. Stats, c. 68.

1854, 435, § 3.

not encumber any portion of the streets not occupied by the said railroad or tracks.<sup>1</sup>

Penalty for obstructing tracks, &c.  
Ibid. § 4.

4. If any person shall wilfully or maliciously obstruct said corporation in the use of said road or tracks, or the passing of the cars or carriages of said corporation thereon, such persons, and all who shall be aiding or abetting therein, shall be punished by a fine not exceeding five hundred dollars, or may be imprisoned in the common jail for a period not exceeding three months. If said corporation, or its agents or servants, shall wilfully and maliciously obstruct any highway, or the passing of any carriages over the same, said corporation shall be punished by a fine not exceeding five hundred dollars.

Capital stock not to exceed \$300,000.  
Ibid. § 5.

5. The capital stock of the said corporation shall not exceed the sum of three hundred thousand dollars, to be divided into shares of fifty dollars each. And no shares shall be issued for a less sum to be actually paid in on each, than the par value of the shares which shall first be issued.

May hold real estate.  
Ibid. § 6.

6. Said corporation shall have power to purchase and hold such real estate, within said city or town, as may be necessary or convenient for the purposes and management of said railroad.

City or town may purchase franchise.  
Ibid. § 7.

7. Either the said city of Boston, or town of Dorchester, if it so elect, may, during the continuance of the charter of said corporation, and after the expiration of ten years from the opening of any part of said railroad for use, purchase of said corporation all the franchise, property, rights, and furniture of said corporation, by paying to said corporation therefor such a sum as will reimburse to each person who may then be a stockholder therein the par value of his stock, together with a net profit of ten per cent. per annum from the time of the transfer of said stock to him on the books of the corporation, deducting the dividends received by said stockholders thereon, said city and town having the right only to purchase that part of the corporate property within their own limits and jurisdiction respectively, and paying therefor a proportionate sum, on the

<sup>1</sup> Provisions of this section changed by act of 1855, c. 201, § 1. See p. 544, § 16.

basis above mentioned, to be ascertained and fixed by commis- 1854, 435, § 7.  
sioners to be appointed by the supreme judicial court.

8. At any time after the expiration of one year from the opening for use of the tracks of said railroad in any street or road in which the same may be located, as provided by its charter, the board of aldermen of the said city and the selectmen of the said town, respectively, may by vote of the major part thereof determine as to so much of said track as is located within their respective limits, that the same or any part thereof be discontinued; and thereupon, the location shall be deemed to be revoked, and the tracks of said railroad shall forthwith be taken up and removed, in conformity with such vote or order of said board of aldermen or selectmen; *provided*, that such taking up and removal shall be at the expense of said railroad corporation. Location may be revoked. Ibid. § 8.

9. The said railroad shall be constructed and maintained in such form and manner, and upon such grade and with such gauge,<sup>1</sup> as the said board of aldermen and selectmen, respectively may, in their votes fixing and determining the routes thereof, prescribe and direct; and whenever, in the judgment of said railroad corporation, it shall be necessary to alter the grade of any street or road, so occupied by it, such alteration shall be made at the sole expense of said corporation; *provided*, the same shall be assented to by the said board of aldermen and selectmen, respectively. Grade and gauge of road. Ibid. § 9.

10. The said railroad, or any part thereof, shall not be constructed until the above-mentioned street or way, heretofore known as the Dorchester Turnpike, shall have been laid out as a public highway by the county commissioners for the county of Norfolk, duly and according to law. Not to be constructed until, &c. Ibid. § 10.

11. If at any time, for the greater convenience of the inhabitants of that part of Boston called South Boston, it shall become desirable to construct a railroad by horse power from South Boston Point to the junction of Broadway and Turnpike Other corporation may connect with. Ibid. § 11.

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<sup>1</sup> By Act of 1863, c. 100, § 1, it is provided that the tracks of all horse railroads shall be of an uniform gauge. See *ante*, pp. 501, 502.

1854, 435, § 11. Street, or other streets, any corporation chartered for that purpose, shall have the right to connect with the road herein chartered, upon reasonable terms; such terms, in case of dispute, to be ascertained and determined by commissioners appointed for that purpose by the supreme judicial court.

Act not to prevent authorities from taking up streets.  
Ibid. § 12.

12. Nothing in this act shall be construed to prevent the authorities of said city or town, respectively, from taking up any of the public streets or roads traversed by said railroad, for the purposes for which they may now lawfully take up the same.

Act to be void unless accepted, &c.  
Ibid. § 13.

13. This act shall be void, so far as relates to the right to construct said road in either said city or said town, unless the same shall be accepted by the city council of the city of Boston and the selectmen of the town of Dorchester, and unless the same shall be accepted by the said corporation, and ten per cent. of the capital stock thereof paid in within two years from the passage of this act.<sup>1</sup>

Returns.  
Ibid. § 14.

See G. S., c. 63,  
§ 130.

14. The said company shall be deemed a railroad corporation, so far as to be subject to make such annual returns to the legislature, as are or may be prescribed by law in relation to railroad corporations, but not to the other general provisions of law in relation to railroad corporations.<sup>2</sup>

Limitation of act.  
Ibid. § 15.

15. The existence of said corporation is hereby limited to the period of fifty years from the passage of this act; *provided*, *nevertheless*, that the legislature may at any time repeal this act, or limit, restrict, or annul any powers herein granted.

Road-bed not occupied not to be repaired by company.  
1855, 261, § 1.  
See p. 541, § 3.

16. The Dorchester Avenue Railroad Company shall not be required to keep in repair any part of the bed of any road within the limits of the town of Dorchester which shall not be actually occupied by the tracks of their railroad, anything in the third section of their act of incorporation passed April twenty-nine, eighteen hundred and fifty-four, to the contrary notwithstanding.

Liable for

17. Said corporation shall continue to be liable, as provided

<sup>1</sup> Accepted by the city council of Boston, October 9, 1854. Accepted by town of Dorchester 1854.

<sup>2</sup> By the Act of 1861, c. 120, § 1, horse railroad corporations are required to make returns of stockholders, &c., to assessors. See note, *ante*, p. 485.

in said act, for any defect or want of repair in such parts only <sup>defects, &c., in</sup> of the roads in the town of Dorchester as shall be occupied by <sup>roads occupied</sup> their tracks; but nothing contained in this act shall release the <sup>by tracks.</sup> said corporation from any obligation now existing to repair or <sup>1855, 201, § 2.</sup> make good any damage to the whole bed of said road which shall be occasioned during the construction of their railroad; *provided*, that the occupancy of said track shall be taken to be <sup>Proviso.</sup> the space between the rails and so much on each side thereof as shall be within the perpendicular let-fall from the extreme width of any car or carriage used thereon, being the space from which the public travel is excluded during the passing of said car or carriage; and the structure and repairs of said portion of the road shall be such as not to interrupt the diagonal or parallel lines of travel of the public over said avenue.

18. The Dorchester Avenue Railroad Company is hereby <sup>Extension of</sup> empowered to construct, maintain, and use a railway or rail- <sup>railroad author-</sup> ways, with convenient single or double tracks, to be operated <sup>ized.</sup> by horse power only, upon and over such streets and ways <sup>1855, 66, § 1.</sup> within the limits of that part of the city of Boston which was <sup>See 1855, c. 468.</sup> set off from the town of Dorchester, by the four hundred and sixty-eighth chapter of the Acts of the year one thousand eight hundred and fifty-five, as the mayor and aldermen of said city of Boston may, by their votes, from time to time, permit or determine; and also upon and over such streets and ways within the limits of the town of Dorchester, upon and over which the said company has not heretofore been authorized to construct said railway, as the selectmen of said town shall, by their votes, from time to time, permit or determine.

19. All tracks of said railroad shall be laid at such dis- <sup>Tracks, how to</sup> tances from the sidewalks, in said city of Boston and town of <sup>be laid.</sup> Dorchester, and shall be constructed and maintained in such <sup>1855, 66 § 2.</sup> form and manner, and upon such grades, and with such gauge,<sup>1</sup> as the mayor and aldermen of said city and the selectmen of said town, respectively, shall determine to be for the public safety and convenience; and before the location or construction of any track in any street or highway, the mayor and alder-

<sup>1</sup> See note, *ante*, p. 543.

1856, 66, § 2.

men of said city and selectmen of said town, respectively, shall give notice to the abutters thereon, in the manner provided in the four hundred and thirty-fifth chapter of the Acts of the year one thousand eight hundred and fifty-four.<sup>1</sup>

Powers conferred by former acts, continued. Ibid. § 3.

20. The mayor and aldermen of said city of Boston and the selectmen of said town of Dorchester, shall respectively have and possess, in respect to the railway or railways constructed and maintained under this act, and the regulation of the rate of speed and mode of use of said tracks, and the discontinuance of the same, or any part thereof, all the powers conferred on them by the four hundred and thirty-fifth chapter of the Acts of the year one thousand eight hundred and fifty-four, and all the powers and rights and privileges, by this act conferred on said Dorchester Avenue Railroad Company, shall be subject to all the duties, liabilities, conditions, restrictions, and provisions contained in the four hundred and thirty-fifth chapter of the Acts of the year one thousand eight hundred and fifty-four, and in the two hundred and first chapter of the Acts of the year one thousand eight hundred and fifty-five.<sup>2</sup>

See 1854, c. 435.

Company authorized to issue bonds not to exceed amount of capital. 1856, 279, § 1.

21. The Dorchester Avenue Railroad Company are hereby authorized to issue bonds, for the purpose of constructing their road, or for money which it may borrow, for any purpose sanctioned by law; but the bonds so issued shall not exceed the amount of capital stock paid in by the stockholders of said company. Such bonds may be issued in sums of not less than five hundred dollars each, payable in twenty years from their date, with interest at the rate of six per cent., payable semi-annually.

Bonds to be approved. Ibid. § 2.

22. Such bonds shall be approved by a majority of the finance committee of said corporation, who shall certify that each of said bonds is properly issued and recorded upon the books of the corporation. All bonds and notes which shall be issued by said corporation shall be binding and collectable in law, notwithstanding such bonds or notes may be negotiated and sold by such corporation, or their agents, at less than par.

Security of

23. Said bonds shall be secured by a conveyance of the

<sup>1</sup> See Act, *ante*, pp. 539-544, &c.

<sup>2</sup> See Act, *ante*, p. 544.

corporate property to three trustees, by a suitable instrument to bonds.  
 be prepared for that purpose, as a pledge or mortgage to secure 1856, 279, § 3.  
 the performance of the conditions of said bonds.

24. The said corporation shall, semi-annually, pay to said trustees a sum equal to two per cent. per annum, on the amount Sinking fund and trustees of. Ibid. § 4.  
 of said bonds, for the purpose of creating a sinking fund. Said trustees shall have the care and management of all the moneys, funds, and securities at any time belonging to said sinking fund; and they shall from time to time at their discretion, invest the moneys on hand securely, and so that they shall be productive, and the same may be invested in the bonds of the Dorchester Avenue Railroad Company, secured as aforesaid, or loaned on interest to any county, city, or town, or any bank of this commonwealth, or the same may be loaned on interest, well secured by a first mortgage of real estate to an amount not exceeding one half the value thereof, or by pledge of the scrip or stock of any of the New England States, or of any city, county, or town, as aforesaid, or of any bank incorporated by this commonwealth; and the said fund, together with the accruing interest, shall constitute a sinking fund for the payment and redemption of said bonds.

25. Said trustees shall make an annual return to the secretary of this commonwealth, of the whole amount of bonds Trustees to make annual returns. Ibid. § 5.  
 issued by said corporation and secured by mortgage as aforesaid, and the whole amount by them received, and the investments made thereof.

26. In case of failure by the said corporation, in the performance of any of the conditions of said bonds, the trustees shall petition the supreme judicial court for leave to sell the property conveyed to them as aforesaid; <sup>1</sup> and thereupon the same shall be sold in such way and manner as the court may order; and after the payment of all costs and expenses, there shall be paid into the sinking fund a sum which, added to the amount then on hand, shall equal the amount of said bonds, and any interest thereon due and unpaid, and the remainder thereof paid to said corporation. In case of failure, &c., supreme judicial court may order sale. Ibid. § 6.

<sup>1</sup> See note, *ante*, p. 539.

Purchasers may  
organize as a  
corporation,  
&c.  
1856, 279, § 7.  
See *post*, § 30.

27. The purchaser or purchasers at such sale may associate themselves together, under any name by them assumed, for the purpose of managing said railroad, and they shall, together with their successors and assigns, be and remain a body corporate, under the name assumed by them; but, before they shall commence business, they shall make a certificate, setting forth their corporate name, the amount of capital actually paid in, and the par value of the shares; which certificate shall be signed and sworn to by the president, treasurer, and a majority of the directors of said company, published three times in two daily Boston papers, and filed with the secretary of the commonwealth; and when so organized, they shall become a corporation with like powers and privileges, and subject to all the duties and restrictions set forth in the act incorporating the Dorchester Avenue Railroad Company.

Equity powers  
of supreme  
judicial court.  
1856, 279, § 8.

28. The supreme judicial court shall have full equity powers on all matters relating to this act, or the acts to which it is in addition.

Act not to take  
effect unless ac-  
cepted, &c.  
*Ibid.* § 9.

29. This act shall not take effect unless it shall be accepted by a majority of the stockholders of the aforesaid corporation, at a meeting called for that purpose.<sup>1</sup>

Prior organiza-  
tion of the com-  
pany confirmed.  
1863, 232, § 1.  
See § 27.

30. The organization of the Dorchester Railway Company, under the provisions of section seven of the two hundred and seventy-ninth chapter of the Acts of eighteen hundred and fifty-six, is hereby confirmed.

Purchase of the  
Dorchester ex-  
tension author-  
ized.  
1863, 232, § 2.

31. The said company is hereby authorized to purchase the franchise, railroad and other property of the Dorchester Extension Railway Company; *provided*, such purchase shall not be made until the same has been sanctioned by a majority in interest of the stockholders of both companies.

May sell or  
lease its road  
and franchise.  
*Ibid.* § 3.

32. The Dorchester Railway Company is hereby authorized to sell or lease its railroad franchise and other property, or any part of the same, including what they may acquire under the provisions of section second of this Act, to any other horse railroad corporations in the counties of Suffolk and Norfolk, or in

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<sup>1</sup> Accepted by the company.

either of them; *provided, however*, that no such sale or lease shall be made without the sanction of a majority in interest of the stockholders of said Dorchester Railway Company and of a majority in interest of the stockholders of the company purchasing or leasing the same, and the company purchasing or leasing the franchise and railroad of said Dorchester Railway Company may purchase and hold any real estate in Dorchester which may be required for their railroad purposes.

Contract to be sanctioned by a majority of stockholders in interest 1863, 232, § 3.  
Company purchasing may hold real estate, &c. Ibid.

### *First Location.*

1. Commencing on Dorchester Avenue, at the dividing line between the town of Dorchester and the city of Boston, and running upon or near the centre of said avenue to the North Free Bridge,<sup>1</sup> thence upon and over the centre of said bridge to Sea Street, thence upon or over the centre of Sea Street to Broad Street, thence upon or near the centre of Broad Street to a point near the junction of Broad Street and State Street; said track to be a single one throughout said route, with two turnouts, one on Broad Street near the foot of Summer Street, and one on Dorchester Avenue; said turnouts not to exceed one hundred feet each in length.

First location. Dec. 30, 1854.

The gauge<sup>2</sup> of said track not to exceed more than four feet and eleven inches in width; the rails to be of the same size and pattern as are used on the Third Avenue Railroad in the city of New York; the method of construction to be similar to that adopted on the railroads in New York; the work to be done to the satisfaction of the superintendent of streets and the committee on bridges.<sup>3</sup>

<sup>1</sup> Now Federal Street Bridge.

<sup>2</sup> See note, *ante*, p. 543.

<sup>3</sup> By an order passed August 19, 1856, the Dorchester Avenue Railroad Company were authorized to construct two additional turnouts, or side-tracks, not more than one hundred and twenty-five feet each in length, one at the end of their road in Broad Street, and the other in Dorchester Avenue, in South Boston, near Washington Village, and seven hundred feet north of Dexter Street.

By an order passed August 19, 1856, the Dorchester Avenue Railroad Company were authorized to lay their track in Dorchester Avenue south of

*Second Location.*

Second  
Location.  
Dec. 30, 1859.

2. The Dorchester Railway Company is authorized to construct and maintain a turnout, not exceeding one hundred and seventy-five feet in length, at such a point on Broad Street, between Pearl and State Streets, as the committee on paving and the superintendent of streets shall decide.

The turnout is granted under the proviso and condition that granite blocks, of such size as the superintendent of streets shall direct, shall be laid inside and outside of the rails, and that the whole roadway or cartway of the street, in length occupied by the said turnout, shall be kept in good order and complete repair by said Dorchester Railway Company.

And it is further ordered that the said Dorchester Railway Company, in addition to the location already granted, is hereby authorized to locate and construct a single track, from their present track in Dorchester Avenue, over Dorchester Street, (formerly Boston Street,) to the dividing line between the city of Boston and the town of Dorchester. And this additional location is granted under the express proviso and condition to the location, that the said Dorchester Railway Company shall pay the cost of filling up the portion of the said Dorchester Street, occupied by their track, which will be required to bring said street to the grade which has been adopted. Further, that the track shall be laid in such portion of the street as the committee on paving and the superintendent of streets shall determine, and that the form of rail shall also be determined and approved by them.

And further, that the mode and manner of keeping in repair the space within the said track, and two feet outside of each rail shall be decided upon by the committee on paving and the superintendent of streets.

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Foundry Street, at a distance from the centre of the street to the centre of the track, not exceeding four feet.

By an order passed August 8, 1857, the Dorchester Avenue Railroad Company were authorized to construct a turnout in Dorchester Avenue, opposite their car-house.

And, under the further express proviso and condition to this <sup>Second</sup> location, that the said Dorchester Railway Company, or its les- <sup>Location.</sup> sees, shall not run any omnibuses within the limits of this city. <sup>Dec. 30, 1859.</sup>

And under the further express proviso and condition to this location, that the work of laying down the turnout and the track granted under the authority of this order shall not be commenced before the first day of April, eighteen hundred and sixty. Also, that the said Dorchester Railway Company shall accept this order of location and agree to its several provisions and conditions within ten days of the date of its passage; otherwise it shall be null and void.<sup>1</sup>

*Third Location.*

3. The Dorchester Railway Company shall have the right <sup>Third Location.</sup> to lay down an additional track in Dorchester Avenue, from <sup>Nov. 1, 1860.</sup> Dorchester Street to Broadway, there to connect with the track of the Broadway Railroad Company now laid down in said avenue.

The right to lay down this additional track is under the express proviso and condition that the track now down in said avenue shall be so changed, that when the two tracks are laid down they shall occupy such portions of the roadway as the committee on paving and the superintendent of streets shall determine.

Also, under the further express proviso and condition, that when the track now down in said avenue is changed, and the new track, (authorized by this order of location,) is laid down, granite blocks, of such size as the superintendent of streets shall direct, shall be placed on the outside and inside of each rail; and the roadway between the bridge over the track of the Boston and New York Central Railroad and Dorchester Street shall be paved inside of all the rails, and at least three feet outside of the outer rail on either side, in addition to the granite blocks, with round or cobble stones.

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<sup>1</sup> Accepted by the Dorchester Railway Company, January 4, 1860.

Third Location.  
Nov. 1, 1860.

Also, under the further express proviso and condition, that whenever the board of aldermen shall determine and order that the whole of said cartway or roadway lying between the bridge over the Boston and New York Central Railroad and Dorchester Street to be paved with stone material, said Dorchester Railway Company shall do the same at their expense, to the satisfaction of the superintendent of streets, and under his direction, who shall act under the authority of the board of aldermen in causing said Dorchester Railway Company to pave the said roadway.

Also, under the further express proviso and condition, that said Dorchester Railway Company shall, after the rails are laid down, keep in good order and complete repair the whole of the cartway or roadway which is paved, also that portion that is unpaved, and lying between the bridge over the Boston and New York Central Railroad and Dorchester Street which vehicles pass over, — that is to say, the gravelled surface outside of either outside rail.

Also, under the further express proviso and condition, that whenever the board of aldermen shall from time to time determine and order that any portion of said Dorchester Avenue, through and in which the additional track is located by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material; the whole expense of such paving shall be paid by the said Dorchester Railway Company, the work to be done by the superintendent of streets, under the authority of the board of aldermen.

Also, under the further express proviso and condition, that the whole work of laying down the track granted under authority of this order, shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and that the form of rail shall be satisfactory to them and receive their approval.

Also, under the further express proviso and condition, that the said Dorchester Railway Company shall accept this order of location, and agree to its several provisions and conditions with-

in fifteen days after the date of its passage, and file said acceptance and agreement in writing with the city clerk, otherwise it shall be null and void.<sup>1</sup>

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EAST BOSTON WHARF COMPANY'S RAILROAD.

STATUTE.

Powers granted. — Location.

SPECIAL ACT.

The East Boston Wharf Company is hereby authorized to connect its wharves and docks, by railroad, with the rails of the Eastern Railroad, with the consent of the owners thereof, and with the approval of the mayor and aldermen of the city of Boston.

*Location.*

The East Boston Wharf Company is authorized to construct and maintain a single railroad track across Lewis Street and in Webster Street, from Lewis Street to connect with the tracks of the Eastern and Grand Junction Railroads, which cross said Webster Street.

The right to lay down this single track is under the express proviso and condition that said East Boston Wharf Company shall at all times, after the rails are laid down, keep in good order and complete repair that portion of Lewis and Webster Streets lying between the rails, and also that portion of the streets lying outside of the rails and adjacent thereto, extending three feet from and outside of each rail. Also, under the further express proviso and condition, that said East Boston Wharf Company shall run cars for the transportation of merchandise only, on said track, at a rate of speed not exceeding four miles per hour, and that the cars shall not remain stationary on said

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<sup>1</sup> Accepted by Dorchester Railway Company, November 14, 1860.

June 17, 1862. streets, nor occupy said streets more than five minutes in any one hour. A flag-man shall also be stationed on Lewis Street whenever the cars are passing, to prevent accidents; and said company shall be subject to such other restrictions as to the running of the cars upon the said track as the board of aldermen from time to time shall decide and determine that the public good shall require.

Also, under the further express proviso and condition, that the form of rail to be used shall be satisfactory to the committee on paving and superintendent of streets, and shall be approved by them. Also, that the whole work to be done, under authority of this order, shall be under the direction and to the satisfaction of the committee on paving and superintendent of streets.

Also, under the further express proviso and condition, that the board of aldermen reserves the right to order the said single track, located under authority of this order, to be removed whenever in their opinion the public good and necessity shall require the same to be done, and the roadway shall be placed in complete repair after said removal at the cost of said East Boston Wharf Company, and that while said track shall remain in said streets, the said corporation shall indemnify and save harmless the city of Boston against and from all suits and claims for damages arising from defects in said streets, caused by the said track, or by the said corporation.

Also, under the further express proviso and condition, to the location granted under the authority of this order, that said East Boston Wharf Company shall accept this said order of location, and give a bond satisfactory to the committee on paving and the city solicitor, to comply with its several provisions and conditions within twenty days of the date of its passage, and file said acceptance and bond with the city clerk; otherwise it shall be null and void.<sup>1</sup>

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<sup>1</sup> Accepted by railroad company June 26, 1862. Bond approved, filed July 8, 1862.

## LYNN AND BOSTON HORSE RAILROAD.

## STATUTES.

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| <ol style="list-style-type: none"> <li>1. Company authorized to build road, and connect with other roads.</li> <li>2. Right to enter upon tracks of other roads; rates of compensation; in case of disagreement, commissioners to be appointed by supreme court.</li> <li>3. Rates of fare, how fixed.</li> <li>4. Road to be constructed as authorized by city and town authorities.</li> <li>5. Penalties for obstructing road;</li> </ol> | <ol style="list-style-type: none"> <li>penalty on road for obstructing streets, &amp;c.</li> <li>6. May use tracks of Winnisimmet Company, &amp;c., and the tracks of any horse railroad in the city of Boston, in the manner prescribed by the mayor and aldermen of Boston.</li> <li>7. May lease its road and franchise to any other road.</li> </ol> |
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Location, p. 557.

## SPECIAL ACTS.

1. The Lynn and Boston Horse Railroad Company was incorporated by an Act approved April six, eighteen hundred and fifty-nine, chapter two hundred and two. It was authorized to construct and maintain a road with single or double tracks, from the town of North Chelsea through Saugus to the city of Lynn; said road to commence in North Chelsea, or connecting with the Chelsea Beach, Boston and Chelsea, or other roads on the Salem and Boston Turnpike, and through Swampscot to Marblehead. The location and connections were to be determined by the mayor and aldermen and selectmen of said city and towns.

Company authorized to build road and connect with other roads.  
1859, 202, § 1.

2. By the second section of said Act, the corporation was authorized to enter upon and use the tracks of the Boston and Chelsea, Chelsea Beach, and Middlesex Railroad Companies, and the tracks of any other railroad hereafter to be constructed in Chelsea, or in that part of the city of Boston known as East Boston, and over such streets in the cities of Chelsea and Boston (East Boston) as the mayor and aldermen of said cities might designate, upon and for such rates of compensation as might be agreed upon. In case of disagreement with either of said companies as to mode of construction or rates of compensation the same was to be fixed by commissioners to be appointed by the supreme judicial court.

Right to enter upon tracks of certain roads.  
Ibid. § 2.

3. Section four provided that the corporation might fix rates

Rates of fare,

how fixed.  
1859, 202, § 4.

of compensation for transporting passengers and property over their road, not exceeding two and a half cents a mile for any passenger transported for more than four miles, but may send extra cars at specified rates at any time, and to have all the powers and privileges, and be subject to all the duties and liabilities set forth in the forty-fourth chapter of the Revised Statutes.<sup>1</sup>

Road to be constructed as authorized by the city and town authorities.  
Ibid. § 5.

4. The said road and any extension were to be constructed and maintained in such manner and upon such grade as the mayor and aldermen of said city of Lynn and the selectmen of said towns respectively might fix and determine, and if said company should deem it expedient to alter the grade of any street or highway, such alterations are to be made at the expense of said corporation, but such alterations are not to be made till first assented to by said mayor and aldermen and selectmen.

Alteration of grade of streets, how made.  
Ibid.

Penalties on persons and the company for obstructing, &c.  
Ibid. §§ 7, 8.

5. Persons wilfully obstructing the corporation in the use of their road, are liable to fine or imprisonment; and if the corporation, its agents, or servants, wilfully obstruct any street or highway, or the passing of any carriage over the same, said corporation shall be liable to a fine of five hundred dollars.

May use tracks of the Winnisimmet Company, and tracks of other horse railroads in Boston.  
1862, 192, § 1.

6. The Lynn and Boston Railroad Company is hereby authorized to enter upon and use with its horses and cars the tracks of the Winnisimmet Railroad Company within the city of Chelsea, the lands, ferryways, drops, and boats of the Winnisimmet Ferry Company, and the tracks of any horse railroad company in the city of Boston, for the purpose of transporting its own passengers to and from Scollay's Building, so called, in Court Street, in said Boston, or such point northerly of Cornhill as shall be from time to time fixed by the mayor and aldermen of the city of Boston, subject to the convenience of the corporations whose tracks it may be necessary to use for such purpose, and subject also to the permission of the mayor and aldermen of said cities, and such regulations as they may establish in regard to such use, and for such rates of compensation as may be agreed upon; or, in case of disagreement with either of the companies whose tracks shall be so used, the same shall be fixed by three commissioners to be appointed by the supreme judicial court.

Conditions to be prescribed by board of aldermen.  
Ibid.

<sup>1</sup> See Gen. Stats. c. 68.

7. Said railroad company may lease its real estate, tracks, franchise, and rights to any person or persons, or to any other horse railroad company for such term of years as may be agreed upon by the contracting parties.

May lease road  
and franchise.  
1862, 192, § 2.

#### LOCATION.<sup>1</sup>

In accordance with the provisions of an act of the General Court of Massachusetts, passed April thirty, eighteen hundred and sixty-two, the Lynn and Boston Railroad Company is hereby authorized to enter upon and use with its horses and cars the tracks of the Suffolk Horse Railroad Company for the purpose of transporting its own passengers to and from "Scolly's Building," so called, in Court Street, and the Chelsea Ferry landing at the foot of Hanover Street, for such rates of compensation as may be agreed upon with said Suffolk Railroad Company; or, in case of disagreement, the same shall be fixed according to the provision of said act.

Location.  
Aug. 18, 1863.

The right to run said cars by the Lynn and Boston Railroad Company is granted under the express proviso and condition that said company hereby agrees to comply with the general rules and regulations which the board of aldermen have adopted, or shall from time to time adopt, to govern the running of horse cars.

Also, under the further express proviso and condition, that said Lynn and Boston Railroad Company shall be subject to such rules, regulations, and restrictions as to the running of cars authorized by this order as the board of aldermen shall from time to time establish.

Also, under the further express proviso and condition, that if the Lynn and Boston Railroad Company do not accept this privilege and regulation, and agree to comply with its provisions and conditions, in writing, within twenty days from the date of its passage,<sup>2</sup> and file said acceptance with the city clerk, the same shall be null and void.

<sup>1</sup> Passed August 18, 1863.

<sup>2</sup> Accepted by Lynn and Boston Railroad Company, August 21, 1863.

## METROPOLITAN HORSE RAILROAD.

## STATUTES.

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|--|--|
| <ol style="list-style-type: none"> <li>1. Corporators. Board of aldermen to locate tracks.</li> <li>2. Horse power only to be used.</li> <li>3. Corporation to keep streets in repair.</li> <li>4. Corporation not to be obstructed in use of road, and not to obstruct highways.</li> <li>5. Capital stock.</li> <li>6. May hold real estate.</li> <li>7. Cities of Boston and Roxbury may purchase franchise, &amp;c.</li> <li>8. Route, grade, and gauge to be determined by said cities. Route may be altered, &amp;c.</li> <li>9. Said cities may take up streets.</li> <li>10. Act to be void unless accepted by city councils.</li> <li>11. Corporation to make annual returns.</li> <li>12. Charter limited to fifty years.</li> </ol> | <ol style="list-style-type: none"> <li>13. Tracks may be discontinued.</li> <li>14. Rates of fare limited.</li> <li>15. Notice to abutters.</li> <li>16. City of Boston or Roxbury may purchase corporate property in their respective limits.</li> <li>17. Act to be accepted by city councils.</li> <li>18. Time extended for paying capital stock.</li> <li>19. Increase of capital authorized.</li> <li>20. Legislature may repeal, &amp;c.</li> </ol> |
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*Locations.*

1. First Location, p. 563.
2. Second Location, p. 564.
3. Third Location, p. 565.
4. Fourth Location, p. 566.
5. Fifth Location, p. 569.
6. Sixth Location, p. 571.
7. Seventh Location, p. 572.
8. Eighth Location, p. 573.

## SPECIAL ACTS.

Corporators.  
1853, 353, § 1.

1. J. P. Ober, Moses Field Fowler, and Henry N. Hooper, their associates and successors are hereby made a corporation, by the name and title of the Metropolitan Railroad Company, with power to construct, maintain, and use a railway or railways with convenient single or double tracks, from such point or points of the city of Roxbury, upon and over the streets or highways therein, to the line separating said city from the city of Boston, as shall be from time to time fixed and determined by vote of the mayor and aldermen of said city, and assented to in writing by said corporation; and from said line separating said cities, upon and over such streets and highways of the city of Boston, to such point or points in said city as may from time to time be fixed and determined by vote of the board of aldermen of said city of Boston, and assented to in writing by said

Board of aldermen to locate tracks.

corporation; *provided*, that all tracks of said railroad shall be laid at such distances from the sidewalks in said cities as the mayor and aldermen thereof respectively shall, in their orders fixing the routes of said railroad, determine to be for the public safety and convenience; and *provided, further*, that said road may be constructed wholly within the said city of Boston, if said corporation and the mayor and aldermen of said city shall both so elect; and the written assent of said corporation to any vote or votes of the mayor and aldermen of said cities, prescribing from time to time the routes of said road, shall be filed with the respective clerks of said cities, and shall be taken and deemed locations thereof; *provided, further*, that before the location or construction of any track in any street, the mayor and aldermen of said cities, respectively, shall give notice to the abutters thereon, fourteen days at least before the hearing, that they may show cause, if any there be, why said track shall not be so located and constructed; and said corporation shall have power to fix from time to time such rates of compensation for transporting persons or property thereon as they may think expedient, and be subject to all the duties, restrictions, and liabilities, and entitled to all the rights and privileges prescribed by the forty-fourth chapter of the Revised Statutes.<sup>1</sup>

2. Said tracks or road shall be operated and used by said corporation with horse power only, and it shall not connect its track with any other railroad on which other power is used. The mayor and aldermen of said cities, respectively, shall have power at all times to make all such regulations as to the rate of speed and mode of use of said tracks, as the public convenience and safety may require.

3. Said corporation shall maintain and keep in repair such portion of the streets respectively as shall be occupied by their tracks, and shall be liable for any loss or injury that any person may sustain, by reason of any carelessness, neglect, or misconduct of its agents and servants, in the management, construction, or use of said tracks or roads; and in case any recovery shall be had against either of said cities, by reason of such

Provisos.  
1853, 353, § 1.

Horse power  
only to be used.  
Ibid. § 2.

Corporation to  
keep streets in  
repair.  
Ibid. § 3.

<sup>1</sup> See Gen. Stats. c. 68.

1853, 353, § 3. defect, want of repair, or use, said corporation shall be liable to pay to said cities respectively any sums thus recovered against them, together with all costs and reasonable expenditures incurred by said cities, or either of them, in the defence of any such suit or suits, in which such recovery shall be had; and said corporation shall not encumber any portion of the streets not occupied by the said road or tracks.

Corporation not to be obstructed in use of road, and not to obstruct highways. Ibid. § 4. 4. If any person shall wilfully or maliciously obstruct said corporation in the use of said road or tracks, or the passing of the cars or carriages of said corporation thereon, such persons, and all who shall be aiding or abetting therein, shall be punished by a fine not exceeding five hundred dollars, or may be imprisoned in the common jail for a period not exceeding three months. If said corporation, or its agents or servants, shall wilfully and maliciously obstruct any highway or the passing of any carriages over the same, such corporation shall be punished by a fine not exceeding five hundred dollars.

Capital stock. Ibid. § 5. See *post.* p. 563, § 19. 5. The capital stock of said corporation shall not exceed the sum of five hundred thousand dollars, to be divided into shares of fifty dollars each; and no shares shall be issued for a less sum, to be actually paid in on each, than the par value of the shares which shall first be issued.<sup>1</sup>

May hold real estate. Ibid. § 6. 6. Said corporation shall have power to purchase and hold such real estate within said cities, or either of them, as may be necessary or convenient for the purposes and management of said road.

Cities of Boston and Roxbury may purchase franchise, &c. Ibid. § 7. See § 16. 7. The cities of Boston and Roxbury may, at any time during the continuance of the charter of said corporation, and after the expiration of ten years from the opening of any part of said road for use, purchase of said corporation all the franchise, property, rights, and furniture of said corporation, by paying them therefor such a sum as will reimburse to each person, who may then be a stockholder therein, the par value of his stock, together with a net profit of ten per cent. per annum, from the time of the transfer of said stock to him on the books of the

<sup>1</sup> By Act of 1859, c. 9, authority to increase the capital stock or alter the charter, was reserved. See *post.* p. 517, § 19.

corporation, deducting the dividends received by said stockholders 1853, 353, § 7. thereon.

8. The said road shall be constructed and maintained in such form and manner, and upon such grade and with such gauge,<sup>1</sup> as the mayor and aldermen of said cities respectively may, in their votes, fixing and determining the routes thereof, as aforesaid, prescribe and direct; and whenever, in the judgment of said railroad corporation, it shall be necessary to alter the grade of any street so occupied by it, such alteration may be made at the sole expense of said corporation; *provided*, the same shall be assented to by the mayor and aldermen of said cities respectively.

Route, grade, and gauge to be determined by said cities. Ibid. § 8.

Route may be altered, &c. Ibid.

9. Nothing in this act shall be construed to prevent the city authorities of either of said cities, from taking up any of the public streets traversed by said railroads, for the purposes for which they may now lawfully take up the same.

Said cities may take up streets. Ibid. § 9.

10. This act shall be void, so far as relates to the right to construct said road in either of said cities, unless the same shall be accepted by the city councils of said cities respectively, and unless the same shall be accepted<sup>2</sup> by said corporation, and ten per cent. of the capital stock thereof paid in, within two years from the passage of this act.<sup>3</sup>

Act to be void unless accepted by city councils. Ibid. § 10.

Capital stock.

11. The said corporation shall be deemed a railroad corporation, so far as to be subject to make such annual returns to the legislature, as are or may be prescribed by law; but not to the other general provisions of law, in relation to railroad corporations.

Corporation to make annual returns. Ibid. § 11. See note, *ante*, p. 485.

12. The existence of said corporation is hereby limited to the period of fifty years from the passage hereof.

Charter limited to fifty years. 1853, 353, § 12.

13. At any time after the expiration of one year from the opening for use of the tracks of said railroad, in any street in which the same may be located, as provided by its charter, the mayor and aldermen of the cities of Boston and Roxbury, re-

Tracks may be discontinued. 1854, 94, § 1.

<sup>1</sup> See note, *ante*, p. 543.

<sup>2</sup> Accepted by the city council of Boston, July 29, 1853, and by Roxbury, June 20, 1853.

<sup>3</sup> Time extended one year from April 14, 1855, by Act of 1855, c. 193. See *post*. p. 562, § 18.

1854, 94, § 1.      spectively, may, by vote of the major part thereof, determine as to so much of said track as is located within the limits of their respective cities, that the same, or any part thereof, be discontinued; and thereupon the location shall be deemed to be revoked, and the tracks of said railroad shall forthwith be taken up and removed, in conformity with such vote or order of said mayor and aldermen; *provided*, that such taking up and removal shall be at the expense of said railroad company.

Rates of fare limited.  
Ibid. § 2.

14. The rates of fare upon the said railroad, between any two points in the city of Boston, shall never exceed five cents for each passage, unless with the assent of the board of aldermen of said city.

Notice to abutters.  
Ibid. § 3.

15. Notice to abutters on streets, in which it may be proposed to lay the tracks of said corporation, shall be given by the publication in one or more newspapers, published in the cities of Boston and Roxbury, of an order of notice from the mayor and aldermen of said respective cities, fourteen days at least prior to the location of any such tracks.

City of Boston or Roxbury may purchase corporate property in their respective limits.  
Ibid. § 4.  
See § 7.

16. Either of the cities of Boston or Roxbury, if it so elect, may purchase, on the same terms and conditions as are mentioned in the seventh section of the Act to which this is in addition, that part of the corporate property of the company which relates to or lies within its own limits; paying therefor a proportional sum, to be ascertained by commissioners to be appointed by the supreme judicial court.

Act to be accepted by city councils.  
1854, 94, § 5.

17. This act shall be void and of no effect, unless the same shall be accepted by the city council of the cities of Boston and Roxbury, respectively, within one year from March sixteen, eighteen hundred and fifty-four.<sup>1</sup>

Time extended for paying capital stock.  
1855, 193.

See § 10.

18. The time within which ten per cent. of the capital stock of the Metropolitan Railroad Company is required to be paid in by chapter three hundred and fifty-three of the Acts of eighteen hundred and fifty-three, is hereby extended for a year from and after April fourteen, eighteen hundred and fifty-five.

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<sup>1</sup> Accepted by the city council of Boston, May 18, 1854, and by the city of Roxbury, December 27, 1854.

19. The Metropolitan Railroad Company is hereby authorized to increase its capital stock by adding thereto a sum not exceeding four hundred thousand dollars, and to invest such portion thereof in real estate in the town of Dorchester as may be necessary and convenient for the purposes for which said company was incorporated; *provided, however*, that no shares in the capital stock hereby authorized shall be issued for a less sum or amount, to be actually paid in on each share than the par value of the stock of said company.

Increase of capital authorized, 1850, 9, § 1.  
See *ante*, p. 560, § 5.

20. The legislature may at any time repeal this act, and the three hundred and fifty-third chapter of the Acts of the year eighteen hundred and fifty-three incorporating said Metropolitan Railroad Company, or limit, restrict, or annul any powers in said acts granted.<sup>1</sup>

Legislature may repeal, &c. Ibid. § 2.

#### *First Location.*

1. The tracks of the Metropolitan Railroad shall be located as follows: but on the express condition to the location, that said railroad company shall, at all times after the rails are laid down, keep in good order and complete repair, at their own expense, that portion of all streets through which the said rails are or may be laid, lying between the rails, and also that portion of the street lying outside of the rails and adjacent thereto, extending one foot and a half from and outside of each rail throughout the whole length of said road in the streets of the city of Boston.

First location. Aug. 7, 1855.

Two tracks in Washington Street, from the boundary line between the cities of Boston and Roxbury to Dover Street.

Two tracks in Tremont Street, from the boundary line between Boston and Roxbury to the Boston and Worcester Railroad Bridge crossing.

One track in Tremont Street, from the Boston and Worcester Railroad Bridge crossing to Boylston Street.

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<sup>1</sup> For the Act of 1862, c. 175, concerning the mutual use of the tracks by the Suffolk, Metropolitan, and Broadway Railroad Companies, see post., *Suffolk Railroad*, Statutes, §§ 21-30.

First location.  
Aug. 7, 1855.

Two tracks in Tremont Street, from Boylston Street to a point opposite the Granary Burying Ground.

One track in Shawmut Avenue, from the boundary line between Boston and Roxbury to Dover Street.

One track in Springfield Street, from Washington Street to Tremont Street.

One track in Waltham Street, from Washington Street to Tremont Street.

One track in Dover Street, from Washington Street to Tremont Street.

*Second Location.*

Second location.  
Aug. 7, 1856.

2. In addition to the right already granted to the Metropolitan Railroad Company, to lay down tracks in several streets of the city of Boston, the said company shall have the right to lay down a single track through Washington Street, from Dover Street to Boylston Street, thence through Boylston Street to Tremont Street.

The said single track to be laid down in the centre of the roadways of said Washington and Boylston Streets; and the distance between the edge-stones and the rail on each side shall not be less than nine feet, except at the curve at Tremont Street.

The right to lay down this additional track is under the proviso, that said Metropolitan Railroad Company agree to comply with the express conditions contained in the order of location passed by the board of aldermen, August six, eighteen hundred and fifty-five, in relation to keeping in good order the portion of the streets lying between the rails and that portion of the street lying outside of the rails and adjacent thereunto, extending one foot and a half from and outside of each rail; also, that the whole work of laying down the tracks granted by this order, and by the order of August seven, eighteen hundred and fifty-five, be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets. The form of rail to be used to be satisfactory to the committee on paving and the superintendent of streets, and to be approved by them.

See *ante*, p. 563.

*Third Location.*

3. The Metropolitan Railroad Company is authorized to construct and maintain a turnout, seventy feet in length on a straight line in Washington Street, between Northampton Street and Camden Street, on the westerly side of the tracks now laid down upon said Washington Street, and used by said company. The said turnout is to commence to leave the outer rail of the westerly track opposite the corner-stone of the sidewalk on the southerly side of Northampton Street, and connect with the outer rail of the westerly track at a point distant one hundred feet from the corner-stone on the northerly side of Camden Street. The said turnout to be not exceeding seventy feet in length on a straight line. The right to lay down this turnout is under the express proviso that said Metropolitan Railroad Company agree to comply with the conditions contained in the order of a location passed by the board of aldermen, August six, eighteen hundred and fifty-five, in relation to keeping in good order the portion of the street lying between the rails and that portion of the street lying outside of the rails and adjacent thereto, and extending one foot and a half from and outside the outer rail of the said turnout; also, that the whole work of laying down said turnout be done under the direction and to the satisfaction of the superintendent of streets; and to be completed on or before the first of May, eighteen hundred and fifty-nine. Also, under the further proviso that the said Metropolitan Railroad Company shall start a car from the said turnout on Washington Street, between Northampton and Camden Streets; and also from the terminus on Tremont Street, near the Tremont House, as follows:

Third location.  
March 8, 1859.

See ante, p. 563.

From April to November, each day, —

Every 10 minutes from	6½ o'clock,	A. M.,	to	7,	A. M.
“ 5	“	“	7	“	“ 9, “
“ 10	“	“	9	“	“ 12½, P. M.
“ 5	“	“	12½	P. M.,	“ 3 “
“ 10	“	“	3	“	“ 5½ “
“ 5	“	“	5½	“	“ 7½ “
“ 10	“	“	7½	“	“ 11 “

Third location.  
March 8, 1859.

From November to April, each day, —

Every 10 minutes from 7½ o'clock, A.M., to 8, A.M.

“	5	“	“	8	“	“	“	9½	“
“	10	“	“	9½	“	“	“	12½	P. M.
“	5	“	“	12½	“	P. M.,	“	3,	“
“	10	“	“	3	“	“	“	5,	“
“	5	“	“	5	“	“	“	7,	“
“	10	“	“	7	“	“	“	11	“

See p. 568,  
note 1.

The first time of starting, as above provided, to be from the turnout on Washington Street, near Northampton Street. And that said Metropolitan Railroad Company shall sell twenty-five tickets for one dollar, which tickets shall be good for a passage in the cars running from the terminus on Tremont Street, near the Tremont House, to and from the turnout on Washington Street between Northampton and Camden Streets; also in the Tremont Street line of cars to and from Camden Street, and the terminus on Tremont Street, near the Tremont House; also, under the further proviso that whenever the said Metropolitan Railroad Company shall refuse to sell twenty-five tickets for one dollar, to be used as above described, the board of aldermen may order the Metropolitan Railroad Company to take up the turnout granted by this order, and put the street in complete repair. If said Metropolitan Railroad Company shall refuse to comply with said order, then the superintendent of streets is directed to cause the same to be removed at the expense of said Metropolitan Railroad Company.

The acceptance of this order of location of this turnout by said Metropolitan Railroad Company, shall be filed in writing with the city clerk before the turnout shall have been laid down.<sup>1</sup>

*Fourth Location.*

Fourth loca-  
tion.  
Dec. 31, 1859.

4. In addition to the rights heretofore granted to the Metropolitan Railroad Company to lay down tracks in several of the streets of the city of Boston, the said company shall have

<sup>1</sup> Accepted by the Metropolitan Railroad Company, March 16, 1859.

the right to lay down a single track in Tremont Street, from its present terminus in said street, to and across the open space southerly of Scollay's Building, to the junction of Court Street and Cornhill; in Cornhill to Washington Street; and in Washington Street from Cornhill to its present track, located at the junction of Boylston and Washington Streets. The said single track to be laid down in the centre of the cartway or roadway of the streets above mentioned.

Fourth location.  
Dec. 31, 1859.

The right to lay down this additional track is under the express proviso and condition to the location, that said Metropolitan Railroad Company shall at all times, after the rails are laid down, keep in good order and complete repair the whole of the roadway or cartway of the streets in which the track is located by this order, at their own expense, and to the satisfaction of the superintendent of streets; and whenever the board of aldermen shall from time to time determine and order that any portion of the said streets through and in which the track is located, by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material, the whole expense of such paving shall be paid by the Metropolitan Railroad Company, the work to be done by the superintendent of streets, under the authority of the board of aldermen.

This location is granted under the further express proviso and condition that the board of aldermen reserve the right to permit the Middlesex Railroad Company, and any other horse railroad company, to run cars over the track so located by authority of this order, for such compensation, to be paid to the Metropolitan Railroad Company, and upon such terms and conditions as the board of aldermen for the time being shall prescribe. Also, under the further express proviso and condition, that the whole work of laying down the track granted by this order shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets.

Also, under the further express proviso and condition, that the said Metropolitan Railroad Company shall run the cars over the track granted by this additional location, down Tremont Street to Cornhill, down Cornhill to Washington Street, and

Fourth loca-  
tion.  
Dec. 31, 1859.

up Washington Street to Boylston Street; that is to say, the cars shall come in and pass down Tremont Street and Cornhill, and go out over Washington Street.

Also, under the further express proviso and condition, that in the construction of said track, granite blocks of such size as the superintendent of streets shall direct, shall be laid down inside and outside of each rail.

[Also, under the further express proviso and condition, that no higher rate of fare shall be charged in the Neck line, and Tremont Street line, within the limits of the city of Boston, than four cents for each passenger.]<sup>1</sup>

Also, under the further express proviso and condition, that the form of rail to be used shall be satisfactory to the committee on paving and the superintendent of streets, and shall be approved by them. Also, that the work of laying down the tracks granted under the authority of this order, shall not be commenced before the first day of April, eighteen hundred and sixty.

Also, on condition that the said railroad company shall, when they file their acceptance of this location with the city clerk, pay into the city treasury the sum of four thousand dollars towards the widening of Washington Street, near Milk Street.

Also, under the further proviso and condition, that the said Metropolitan Railroad Company shall run no omnibuses whatever in Washington or Tremont Street, after the cars shall commence running over the track granted in this location.

Also, under the further express proviso and condition, that

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<sup>1</sup> Rescinded April 24, 1860, and the following substituted therefor: "Also, under the further express proviso and condition, that the rates of fare to be charged by said company shall be the following, and none other, to wit: For the passage between Camden Street, in said city of Boston, and the northern terminus of the said road as now located, or any part of said passage, or for the passage between the said northern terminus of the said road as now located and said Camden Street, or any part thereof, the said Metropolitan Railroad Company shall sell tickets at the rate of not less than twenty-eight tickets for one dollar, and each of these tickets shall be good for a passage in any car of the Metropolitan Railroad Company between the said Camden Street and the said northern terminus as now located, or any part thereof, or between the said northern terminus as now located and the said Camden Street or any part thereof; *provided, however*, if the said fare is not paid by tickets as aforesaid the said Metropolitan Railroad Company may charge, and the rate of fare shall be, five cents for each passenger. See *City Records*, 1860, p. 254.

the said Metropolitan Railroad Company shall accept this order of location, and agree to its several provisions and conditions within ten days of the date of its passage; otherwise it shall be null and void.<sup>1</sup>

Fourth location.  
Dec. 31, 1856.

The roadway or cartway, mentioned in this order, is to include the whole space between the edge-stone supporting the sidewalks on either side.

### *Fifth Location.*

5. In addition to the rights heretofore granted to the Metropolitan Railroad Company to lay down tracks in the streets of the city of Boston, the location of a single track in Essex Street from Washington Street to Harrison Avenue; in Harrison Avenue from Essex Street to Dover Street; in Dover Street from Harrison Avenue to Washington Street, temporarily granted to said company, is hereby made a permanent location upon the following provisos and conditions, viz: <sup>2</sup>

Fifth location.  
Sept. 5, 1861.

The said Metropolitan Railroad Company shall have the right to lay down a single track in Essex Street from Washington Street to Harrison Avenue; in Harrison Avenue from Essex Street to Dover Street; in Dover Street from Harrison Avenue to Washington Street, and to form connections with the tracks of said company in Washington Street, as the tracks are now laid in said streets.

The location of the tracks in Essex Street, Harrison Avenue, and Dover Street, made permanent and granted under authority of this order, is under the express proviso and condition that the said Metropolitan Railroad Company shall relay said single track whenever ordered so to do by the committee on paving and the superintendent of streets for the time being, and when said tracks are relaid granite blocks of such dimensions as the superintendent of streets shall direct, shall be laid down inside and outside of each rail.

<sup>1</sup> Accepted by the Metropolitan Railroad Company, January 4, 1860.

<sup>2</sup> A temporary location in East Dover Street, Harrison Avenue, and Essex Street was granted to the Metropolitan Railroad Company to expire on May 1, 1861.

Fifth location.  
Sept. 5, 1861.

Also, under the further express proviso and condition, that the said Metropolitan Railroad Company shall not run the Jamaica Plains or Brookline cars in Tremont Street, northerly of School Street, in Cornhill, or in Washington Street northerly of Boylston Street. The said Metropolitan Railroad Company is hereby allowed to construct and maintain a curve track at the southerly corner of Tremont and Dover Streets.

Also, under the further express proviso and condition, that said Metropolitan Railroad Company shall be subject to such restrictions as to the running of the cars upon their tracks as the board of aldermen from time to time shall decide that the public good shall require.

Also, under the further express proviso and condition, that said Metropolitan Railroad Company shall at all times after the rails are laid down keep in good order and complete repair the whole of the roadway or cartway of the streets in which the tracks are located by this order, at their own expense, and to the satisfaction of the superintendent of streets; and whenever the board of aldermen shall, from time to time, determine and order that any of the said streets through and in which the tracks are located, by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material, the whole expense of such paving shall be paid by the said Metropolitan Railroad Company, the work to be done by the superintendent of streets, under the authority of the board of aldermen.

Also, under the further express proviso and condition, that the whole work to be done under authority of this order shall be under the direction and to the satisfaction of the committee on paving and the superintendent of streets.

Also, under the further express proviso and condition, that the said Metropolitan Railroad Company shall make a correct return to the board of aldermen of the number of cars used and run upon any of the tracks of the said Metropolitan Railroad from without the city of Boston, and shall pay into the city treasury for each successive six months, ending with the months of December and June, in each year, the sum of one dollar for each car as before mentioned, within ten days from the day said

return was due; *provided*, that said company shall acquire no right not otherwise granted to it by the payment of said sum. Fifth location.  
Sept. 5, 1861.

Also, under the further express proviso and condition to the location granted under the authority of this order, that said Metropolitan Railroad Company shall accept this said order of location, and agree to comply with its several provisions and conditions in writing, within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk; otherwise it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on both sides of the streets.

#### *Sixth Location.*

6. The Metropolitan Railroad Company is authorized to construct and maintain a curve track at the southerly corner of Boylston and Tremont Streets, to connect their track now down in Boylston Street with their track now down in Tremont Street under the immediate direction and supervision of the superintendent of streets, and in such manner and of such materials as he shall prescribe. Sixth location.  
July 1, 1862.

The said Metropolitan Railroad Company is also allowed to run their Tremont Street cars from Washington Street over the curve track of the Suffolk Railroad Company at the corner of Washington and Boylston Streets for a compensation to be fixed according to law, thence through Boylston Street to Tremont Street, turning southerly over the curve track hereby authorized to be constructed at the corner of Boylston and Tremont Streets.

The right hereby given to construct the curve track at the southerly corner of Boylston and Tremont Streets, and to run cars over the curve track of the Suffolk Railroad Company, at the corner of Boylston and Washington Streets is under the express proviso and condition that the board of aldermen reserve the right to permit any other horse or street railroad company to run cars over the curve track located at the corner of Boylston and Tremont Streets by the terms of this order.

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<sup>1</sup> Accepted by Metropolitan Railroad Company, September 9, 1861.

Sixth location.  
July 1, 1862.

Also, under the further express proviso and condition, that no other cars than the Tremont Street cars shall be run over the Suffolk Railroad Company's curve track at the corner of Washington and Boylston Streets, and the curve track hereby authorized to be constructed at the corner of Boylston and Tremont Streets, and through Boylston Street; and those shall be run subject to such restrictions and regulations as the mayor and aldermen shall from time to time determine that the public good shall require.

Also, under the further express proviso and condition to the location and right granted under the authority of this order, that said Metropolitan Railroad Company shall accept this said order of location and agree to comply with its several provisions and conditions in writing within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk; otherwise it shall be null and void.<sup>1</sup>

*Seventh Location.*

Seventh location.  
Dec. 9, 1862.

7. The Metropolitan Railroad Company is authorized to run their Boston Neck and Tremont Street cars, or either of them, upon the tracks and routes of location of the Suffolk Railroad Company, from the track of the Metropolitan Railroad Company, near Scollay's Building, to the stations of the steam railroads on Causeway and Haverhill Streets, and return over said routes to the tracks of the Metropolitan Railroad Company, not exceeding twelve cars in each direction each hour, for such compensation as may be mutually agreed upon by said companies, or fixed according to law.

The Metropolitan Railroad Company is also authorized with the assent of the Suffolk Railroad Company, to run the said Boston Neck and Tremont Street cars, or either of them, upon the tracks and routes of location of the Suffolk Railroad Company, from the track of the Metropolitan Railroad Company, near Scollay's Building, to the Chelsea Ferry, and return over said routes to the tracks of the Metropolitan Railroad Company, not exceeding four cars in each direction each hour, for

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<sup>1</sup> Accepted by Metropolitan Railroad Company, July 2, 1862.

the compensation that has been or shall be mutually agreed upon by said companies, or fixed according to law.

Seventh location.  
Dec. 9, 1862.

Also, under the express proviso and condition, that the said Metropolitan Railroad Company shall not charge for a single fare, in the aforesaid Boston Neck or Tremont Street cars, over the route set forth in this order to and from Camden Street and the stations of the said steam-roads or ferries, a sum exceeding five cents.

Also, under the further express proviso and condition, that said privilege is granted, subject to all such restrictions as to the number of cars run, and regulations for the convenience of public travel, as the board of aldermen shall from time to time decide, that the public good or the rights of either party shall require.

Also, under the further express proviso and condition, that if the Metropolitan Railroad Company do not accept this privilege and regulation, and agree to comply with its provisions and conditions in writing, within twenty days from the date of its passage, and file said acceptance with the city clerk, the same shall be null and void.<sup>1</sup>

#### *Eighth Location.*

8. The Metropolitan Railroad Company are authorized to construct and maintain a curve or curved track diverging, with a suitable radius, from the existing tracks of said company on Tremont Street, Boston, at a point distant two hundred and eighty-eight feet, in a southerly direction, from the line of Camden Street, and thence curving northwesterly and entering the land of said company, and connecting with said tracks by suitable switches and rails.

Eighth location.  
Aug. 18, 1863.

The right to lay down such curved track is granted upon the express proviso and condition, that the said company shall pave the portion of Tremont Street included in said curve track and three feet on each side of said curve track, and shall do the

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<sup>1</sup> Accepted by the Metropolitan Railroad Company, December 12, 1862.

Eighth loca-  
tion.  
Aug. 18, 1863.

work of laying down and paving such track and the work connected therewith to the satisfaction of the committee on paving and the superintendent of streets, and shall ever maintain in good order and complete repair the pavement within said track and, for the distance of three feet on each side of the same, and will complete the same within three months from the date of the passage of this order.

Also, under the express proviso and condition, that the whole work of laying down said turnout and paving is to be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and to be completed within four months of the date of the passage of this order.

The said company are also authorized to construct and maintain two curves of suitable radius at the intersection of Dover Street with Washington Street, on the westerly side, the one curving southerly, and the other curving northerly, and connecting with their existing tracks in Washington Street, with the switches necessary for the convenient use of the same.

The right to lay down the above-described curves is upon the express proviso and condition, that the said Metropolitan Railroad Company shall, after said curves are laid down, at all times keep in good order and complete repair the portion of the roadway or cartway of Washington Street at the intersection of Dover Street and fifty feet of said Washington Street both northerly and southerly of Dover Street, and fifty feet of Dover Street westerly of Washington Street; and whenever the board of aldermen shall, from time to time, determine and order that said portions of Washington Street and Dover Street above mentioned shall be repaved with what they shall deem to be the best of stone material, the whole expense thereof shall be paid by the said Metropolitan Railroad Company; the work to be done by the superintendent of streets, under the authority of the board of aldermen.

Also, that the whole work of laying down said curves shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and completed within four months of the date of the passage of this

order, and that thereupon a short piece of rail across the main track on Washington Street, between said curves, shall be removed. Eighth location.  
Aug. 18, 1863.

Also, under the further express proviso and condition, that said company shall accept this said order of location, and agree to comply with its several provisions and conditions, in writing, within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk; otherwise it shall be null and void.<sup>1</sup>

The roadway or cart-way mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on both sides of the street.

#### MIDDLESEX HORSE RAILROAD.

##### STATUTES.

1. Corporators. Power to construct railway. Location. Rates of fare. Location may be revoked.
2. Commissioners to locate road over bridges, &c. Draws may be constructed. Tolls how to be established. Part of act void in certain cases.
3. Cities and towns may purchase franchise, &c.
4. Horse power only to be used.
5. Streets and bridges to be kept in repair by corporation.
6. Obstructions of track punished.
7. Obstructions of highway, &c.

8. Capital stock.
9. May hold real estate.
10. Grade and gauge of road.
11. Authorities may take up roads.
12. Act void unless accepted, &c.
13. Returns to be made.
14. Duration of corporation, &c.
15. Capital stock, time of payment.
16. Location, how extended.

##### *Locations.*

1. First Location, p. 581.
2. Second Location, p. 582.
3. Third Location, p. 582.
4. Fourth Location, p. 585.

##### SPECIAL ACTS.

1. Asa Fisk, Richard Downing, David Kimball, their associates and successors, are hereby made a corporation, by the name of the Middlesex Railroad Company, with power to construct, maintain, and use a railway or railways, with con-

Corporators.  
1854, 434, § 1.  
Power to construct railway.

<sup>1</sup> Accepted by the Metropolitan Railroad Company, August 12, 1863.

Location.  
1854, 434, § 1.

See *post.* § 16.

Proviso.

Rates of fare.

venient single or double tracks, from such point or points of the town of Somerville as shall be fixed by the selectmen of said town, with the assent of said corporation in writing, expressed and filed with said selectmen, and upon and over such of the streets and highways of such town as shall be from time to time fixed and determined by said selectmen, with the written assent of said corporation, filed as aforesaid, to the intersection of the same with the streets and highways with those of the city of Charlestown, and thence upon and over such of said streets as shall be from time to time fixed and determined by the mayor and aldermen of said city, and assented to in writing by said corporation, — to Charlestown Square, and from Charlestown Square through Warren Avenue to Warren Bridge, and upon and over said bridge to the city of Boston; and thence upon and over such of the streets of said city as shall be from time to time fixed and determined by the mayor and aldermen of said city, to such point or points near Haymarket Square, as shall be fixed and determined by said mayor and aldermen, and assented to in writing by said corporation; and thence upon and over Charlestown and Causeway Streets, as shall be from time to time fixed and determined by said mayor and aldermen, if they shall deem it expedient to determine and fix the same, and assented to in writing by said corporation, to Charles River Bridge, and over and upon said bridge, and through Charles Street, in said Charlestown, to Charlestown Square aforesaid; *provided however*, that all tracks of said railroad shall be laid at such distances from the sidewalks in said cities, as the mayor and aldermen of said cities, respectively, and the selectmen of said town of Somerville shall, in their orders, fixing the routes of said railroad, determine to be for the public safety and convenience. And said corporation shall have power to fix, from time to time, such rates of compensation for transporting persons and property as they may think expedient, not exceeding five cents for each passenger; and shall have all the powers and privileges, and be subject to all the duties, liabilities, and restrictions set forth in the forty-fourth chapter of the Revised Statutes.<sup>1</sup> No-

<sup>1</sup> See Gen. Stats. c. 63.

tice to abutters on streets in which it may be proposed to lay the tracks of said corporation, shall be given by the publication in one or more newspapers published in the cities of Boston and Charlestown respectively, of an order of notice from the mayor and aldermen of said respective cities, and the selectmen of Somerville, fourteen days at least prior to the location of any such tracks; *provided, however*, that at any time after the expiration of one year from the opening for use of the tracks of said railroad, in any street in which the same may be located, as provided by its charter, the mayor and aldermen of the cities of Boston and Charlestown, and the selectmen of Somerville, respectively, may, by vote of the major part thereof, determine as to so much of said track as is located within the limits of their respective cities or town, that the same or any part thereof, be discontinued; and thereupon the location shall be deemed to be revoked, and the tracks of said railroad shall forthwith be taken up and removed, in conformity with such vote or order, of said mayor and aldermen, or selectmen; *provided*, such taking up and removal shall be at the expense of said railroad company.

Notice to abutters.  
1854, 434, § 1.

Location may  
be revoked.

2. The governor, by and with the advice and consent of the council, shall appoint three commissioners, whose duty it shall be to fix and determine the location of said railroad upon said Charles River Bridge and Warren Bridge, or upon lines running parallel thereto, and the manner in which the same shall be built thereon, or upon lines running parallel thereto, and the construction of suitable draws in said bridges, and the manner in which the same shall be managed and opened for the passage of vessels, and the attendance upon the same; and in case tolls shall be demanded for the passage of persons or vehicles over said bridges, the said commissioners shall have power to fix and determine the amount which shall be paid by said corporation, for such use of such bridges respectively; and in case the same shall be assented to by the corporation, the same shall be binding upon the commonwealth and said corporation, so long as said bridges respectively remain the property of the commonwealth, unless the same shall be released, or

Appointment  
and duty of  
commissioners.  
Ibid. § 2.

- 854, 434, § 2. some part thereof, by the legislature ; and in case said corporation shall not assent to the rate of compensation as found by said commissioners, the supreme judicial court, upon petition of said commissioners or of said corporation, and upon notice to the other party, shall appoint three commissioners, who shall, upon due notice to the parties interested, proceed to determine and fix the rate of compensation or toll ; and the award of said commissioners, or a major part of them, shall be binding upon the respective corporations interested therein, until they shall have been revised or altered by commissioners so appointed as afore-said ; but no such revision or alteration shall be made by such commissioners, within one year after such decision and award shall have been made. The governor and council shall fix the compensation of the commissioners in this section mentioned,
- Compensation. shall have been made. The governor and council shall fix the compensation of the commissioners in this section mentioned,
- Part of act void in certain cases. but the same shall be paid by said corporation. If any other railroad corporation shall obtain from the mayor and aldermen of the city of Boston, and the mayor and aldermen of the city of Charlestown, and also from commissioners appointed by the governor, authority to lay a track upon any route, or street, or bridge, between Charlestown Square in said Charlestown, and Haymarket Square in said Boston, before the like authority shall have been obtained by this corporation, then so much of this act as authorizes the corporation hereby created, to lay a track or tracks in said street, or route, or bridge, shall become void ; but this corporation may enter upon and use the track or tracks obtained by said corporation, upon such route, or street, or bridge, in such mode and upon such rates of compensation, as may be agreed upon ; or in case of disagreement such mode or rates shall be fixed by three commissioners, to be appointed by the supreme judicial court.
- May use other tracks. void ; but this corporation may enter upon and use the track or tracks obtained by said corporation, upon such route, or street, or bridge, in such mode and upon such rates of compensation, as may be agreed upon ; or in case of disagreement such mode or rates shall be fixed by three commissioners, to be appointed by the supreme judicial court.
- Cities or town may purchase. Ibid. § 3. 3. Either of the cities of Boston or Charlestown, or the town of Somerville may, at any time during the continuance of the charter of said corporation, and after the expiration of ten years from the opening of said road, or any part thereof for use, purchase that part of the corporation property of the company, which relates to, or lies within their limits, paying therefor a just proportional part of the sum which will reimburse to each person who may then be a stockholder therein, the par value of

his stock, together with a net profit of ten per cent. per annum, <sup>1854, 434, § 3.</sup> from the time of the transfer of the said stock to him on the books of the corporation, deducting therefrom the dividends received by said stockholders thereon, to be ascertained by commissioners to be appointed by the supreme judicial court.

4. Said tracks or roads shall be operated and used by said corporation with horse power only, and it shall not connect its track with any other railroad on which other power is used. <sup>Operated by horse power only. Ibid. § 4.</sup> The mayor and aldermen of said cities, respectively, shall have power at all times to make all such regulations as to the rate of speed and mode of use of said tracks, as the public convenience and safety may require.

5. Said corporation shall maintain and keep in repair such portion of the streets and bridges respectively, as shall be occupied by their tracks, and shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect, or misconduct of its agents and servants in the management, construction, or use of said tracks, roads, or bridges, and in case any recovery shall be had against either of said cities or said town by reason of such defect or want of repair, said corporation shall be liable to pay to said cities or said town respectively, any sums thus recovered against them, together with all costs and reasonable expenditures incurred by said cities or said town, or either of them, in the defence of any such suit or suits in which recovery shall be had; and said corporation shall not encumber any portion of the streets or bridges not occupied by said road or tracks. <sup>Repairs on streets, &c. Ibid. § 5.</sup>

6. If any person shall wilfully and maliciously obstruct said corporation in the use of said road or tracks, or the passing of the cars or carriages of said corporation thereon, such person and all who shall be aiding or abetting therein shall be punished by a fine not exceeding five hundred dollars, or may be imprisoned in the common jail for a period not exceeding three months. <sup>Penalty for obstructing track. Ibid. § 6.</sup>

7. If said corporation, or its agents or servants, shall wilfully or maliciously obstruct any highway, or the passing of any carriages over the same, such corporation shall be punished by a fine not exceeding five hundred dollars. <sup>Penalty for obstructing highway. Ibid. § 7.</sup>

Capital stock.  
1854, 434, § 8.

8. The capital stock of said corporation shall not exceed four hundred thousand dollars, to be divided into shares of one hundred dollars each. And no shares in the capital stock shall be issued, for a less sum or amount, to be actually paid in on each, than the par value of the shares which shall first be issued.

May hold real  
estate.  
Ibid. § 9.

9. Said corporation shall have power to purchase and hold such real estate within said cities, or either of them, or said town, as may be convenient or necessary for the purposes and management of said road.

Grade and  
gauge of road.  
Ibid. § 10.

10. The said road shall be constructed and maintained in such form and manner, and upon such grade, and with such gauge,<sup>1</sup> as the mayor and aldermen of said cities and selectmen of said town respectively, may, in their votes fixing and determining the routes thereof, as aforesaid, prescribe and direct; and whenever, in the judgment of said railroad corporation, it shall be necessary to alter the grade of any street so occupied by it, such alteration may be made at the sole expense of said corporation; *provided*, the same shall be assented to by the mayor and aldermen of said cities, and the selectmen of said town respectively.

Act not to pre-  
vent authori-  
ties, &c.  
Ibid. § 11.

11. Nothing in this act shall be construed to prevent the city authorities of either of said cities, or the selectmen of said town, from entering upon and taking up any of the public streets or bridges traversed by said railroad, for the purpose for which they may now lawfully take up the same.

Act void un-  
less, &c.  
Ibid. § 12.

12. This act shall be void, so far as relates to the right to construct said road in either of said cities or town, unless the same shall be accepted by the city councils of said cities and the selectmen of said town respectively, and unless the same shall be accepted by said corporation, and unless ten per cent. of the capital stock thereof shall be paid in within two years from and after the passage of this act.<sup>2</sup>

See § 15.

Returns.

13. Said corporation shall be deemed a railroad corpora-

<sup>1</sup> The gauge of all horse railroads to be uniform. See *ante*, p. 501, § 13.

<sup>2</sup> Accepted by the city council of Boston, October 9, 1854. Accepted by city council of Charlestown, October 9, 1854. Not accepted by the town of Somerville, and no road has been located in that town under the above act.

tion, so far as to be subject to make such annual returns to the legislature as are, or may be prescribed by law, but not to the other general provisions of law in relation to railroad corporations.<sup>1</sup>

14. The existence of said corporation is hereby limited to the period of fifty years from the passage of this act; *provided*, nevertheless, that the legislature may at any time repeal this act, or limit, restrict, or annul any powers herein granted.

15. The time within which ten per cent. of the capital stock of the Middlesex Railroad Company is required to be paid in, by chapter four hundred and thirty-four of the Acts of eighteen hundred and fifty-four, is hereby extended one year from the time now fixed by law.

16. The mayor and aldermen of the city of Boston are hereby authorized to extend the location of the tracks of the Middlesex Railroad Company upon and over such streets within said city as may be determined by them, with the assent in writing of said company; and the Middlesex Railroad Company are hereby authorized to construct, maintain, and use such tracks as may be located as above, with the same powers and privileges, and subject to the same duties, liabilities, and restrictions in relation thereto, as if they had been authorized to be located by the act by which said company was incorporated; *provided*, that said location shall be made and said tracks constructed within two years from the passage of this act.

#### *First Location.*

1. Commencing at Warren Bridge, and running thence across Causeway Street to Beverly Street; thence upon and as near the centre of said Beverly Street as may be, to Charlestown Street, and upon the centre of said Charlestown Street to a point where the northerly line of Haverhill Street, extended easterly, would intersect the line of said track; thence turning back upon said Charlestown Street and upon the centre of said street to Causeway Street; thence upon said street and in the

<sup>1</sup> See note, *ante*, p. 485. Also *Assessment of Taxes*, post. § 60.

First location.  
Sept. 18, 1855.

centre of the same to Charles River Bridge, — the same to be with a single track only, except upon that portion of Charlestown Street, between Beverly Street and Haymarket Square; the gauge of said track not to exceed four feet and eleven inches; the rails to be of the same size and pattern as are used on the Third Avenue Railroad in the city of New York; the method of construction to be similar to that on the railroads in the city of New York; the work to be done to the satisfaction of the superintendent of streets and of the committee on paving.<sup>1</sup>

#### *Second Location.*

Second location.  
Dec. 27, 1856.

2. Commencing at the termination of the track, as already located and laid down in Charlestown Street, and running there-with a double track across Haymarket Square, between the Boston and Maine Railroad depot and the “Fountain Enclosed,” to a point on the line with the edge-stone on the northerly side of Merrimac Street, there to terminate. The distance between the edge-stone and the outer rail on each side shall not be less than nine feet, except at the “Fountain Enclosed.”

The exact location of the two tracks shall be approved by the committee on paving and the superintendent of streets, to whose satisfaction the whole work of laying down the tracks shall be done. The work of laying down the tracks, granted under the authority of this order, is not to be commenced before the first day of April, eighteen hundred and fifty-seven.<sup>2</sup>

#### *Third Location.*

Third location.  
Dec. 31, 1859.

3. In addition to the rights already granted to the Middlesex Railroad Company to lay down tracks in several of the streets

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<sup>1</sup> By an order passed September 27, 1856, the Middlesex Railroad Company were authorized to lay down the “Dorchester Avenue Rail,” instead of the rail mentioned in the order above.

<sup>2</sup> By an order passed May 11, 1857, leave was granted to the Middlesex Railroad Company to change the location of their track in Charlestown Street from Cooper Street to Haymarket Square, so that the same shall be more in the centre of said street.

of the city of Boston, the said company shall have the right <sup>Third location.</sup> to lay down a single track from its present terminus in Haymarket Square across Merrimac to Sudbury Street, and in Sudbury Street from Merrimac Street to Court Street; in Court Street from Sudbury Street to Tremont Row; in Tremont Row to the open space lying southerly of Scollay's Building, so called; thence, on the track of the Metropolitan Railroad, in the space southerly of Scollay's Building, and in Cornhill; thence in Washington Street from Cornhill to Dock Square; in Dock Square to Union Street; in Union Street to Haymarket Square; in Haymarket Square to connect with the track already laid down in said square nearly opposite Cross Street.

The said single track is to be laid down in the centre of the cartway or roadway of the streets above mentioned, with the exception of that in Tremont Row, which shall be laid down on the easterly side thereof. The right to lay down this additional track is under the express provision and condition to the location that said Middlesex Railroad Company shall, at all times after the rails are laid down, keep in good order and complete repair the whole of the roadway or cartway of the streets in which the track is located by this order, at their own expense, and to the satisfaction of the superintendent of streets; and whenever the board of aldermen shall from time to time determine and order that any portion of the said streets, through and in which the track is located by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material, the whole expense thereof shall be paid by the said Middlesex Railroad Company; the work to be done by the superintendent of streets, under the authority of the board of aldermen.

Also, under the further express proviso and condition, that the said Middlesex Railroad Company shall — whenever the city of Boston shall have caused to be widened Union Street, on the westerly side between Friend Street and Marsh Lane, and Sudbury Street, between Hawkins Street and Alden Street, and all obstructions removed from the line of widening — pay into

Third location.  
Dec. 31, 1859.

the city treasury the sum of ten thousand dollars, on their acceptance of this location, as a contribution towards said widening and the removal of the buildings projecting over the line of widening; such widening to be made and said buildings to be removed at such time or times hereafter as the board of aldermen shall determine.

Also, under the further express proviso and condition, that the whole work of laying down the track granted by this order, shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets.

The form of rail shall be satisfactory to the committee on paving and the superintendent of streets, and shall be approved by them.

Also, under the further express proviso and condition, that the said Middlesex Railroad Company shall accept this order of location, and agree to its several provisions and conditions within ten days of the date of its passage; otherwise, it shall be null and void.<sup>1</sup>

Also, under the further express proviso and condition, that the board of aldermen reserve the right to permit the Suffolk Railroad Company, and any other horse railroad company, to run cars over the track so located by authority of this order.

Also, under the further express proviso and condition, that the said Middlesex Railroad Company shall run no omnibuses within the limits of this city.

It is further *provided*, that in laying down the rails, granite blocks of such size as the superintendent of streets shall direct shall be laid down inside and outside of each rail.

The work of laying down the track granted under the authority of this order, shall not be commenced before the first day of April, eighteen hundred and sixty.

The roadway or cartway mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on either side of the streets.

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<sup>1</sup> Accepted by the Middlesex Railroad Company, January 4, 1860.

*Fourth Location.*

4. The Middlesex Railroad Company is authorized to construct and lay down a single track from Union Street through Haymarket Square and Merrimac Street, to connect with the track of the Suffolk Railroad Company in Portland Street; thence upon the tracks of the Suffolk Railroad Company and Cambridge Railroad Company in Portland Street to Causeway Street; thence upon the track of the Suffolk Railroad Company in Causeway Street to Haverhill Street; thence by a single track across Haverhill Street and in Causeway Street to the track of the said Middlesex Railroad Company at the junction of Charlestown and Causeway Streets, and to lay down the requisite curves for connecting said tracks.

The right to lay down the additional tracks in Merrimac and Causeway Streets, and to run over the tracks of the Suffolk and Cambridge Railroad Companies, is under the express proviso and condition that the board of aldermen reserve the right to permit any other horse or street railroad company to run cars over the new tracks authorized to be constructed by authority of this order, for such compensation to be paid to the Middlesex Railroad Company as may be mutually agreed upon, or in case of disagreement, the compensation to be thus paid shall be determined according to law. Fourth location. Oct. 29, 1862. See p. 593, § 23.

Also, under the further express proviso and condition, that said Middlesex Railroad Company shall pay the Suffolk and Cambridge Railroad Company such compensation for the use of their tracks as may be agreed upon by the respective companies, and in case of disagreement, the compensation to be thus paid shall be determined according to law.

Also, under the further express proviso and condition, that said Middlesex Railroad Company shall, at all times after the rails are laid down, keep in good order and complete repair the whole of the roadway or cartway of the streets in which the tracks are located by this order in Merrimac and Causeway Streets, at their own expense, and to the satisfaction of the superintendent of streets; and whenever the board of aldermen

Fourth loca-  
tion.  
Oct. 29, 1862.

shall, from time to time, determine and order that any of the said streets through and in which the tracks are located, by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material, the whole expense of such paving shall be paid by the said Middlesex Railroad Company, the work to be done by the superintendent of streets under the authority of the board of aldermen.

Also, under the further express proviso and condition, that the whole work of laying down the tracks granted under the authority of this order of location shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and that the form of rail shall be satisfactory to the committee on paving and the superintendent of streets, and shall be approved by them.

Also, under the further express proviso and condition, that the said Middlesex Railroad Company shall accept this said order of location, and agree to comply with its several provisions and conditions in writing within sixty days of the date of its passage, and file said acceptance and agreement with the city clerk; otherwise it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on both sides of the street.

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### SUFFOLK HORSE RAILROAD.

#### STATUTES.

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| 1. Corporators. Power to construct, &c. Route.                         | 4. Corporation to keep streets, &c., in repair.                 |
| 2. Rates of fare. Powers and duties. City council may discontinue, &c. | 5. Injury to tracks, &c., how punished.                         |
| 3. Horse power to be used only.  | 6. Corporations obstructing highways, &c., liable to a penalty. |
|  | 7. Capital stock.   |
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<sup>1</sup> Accepted by the Middlesex Railroad Company, December 9, 1862.

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| <ul style="list-style-type: none"> <li>8. Corporation may purchase real estate, &amp;c.</li> <li>9. Board of aldermen may determine grade and alter route.</li> <li>10. Act not to prevent authorities taking up streets.</li> <li>11. Act void unless accepted by city council and company, &amp;c.</li> <li>12. Returns.</li> <li>13. Boston may purchase franchise, &amp;c.</li> <li>14. Corporation may lease or transfer to any other corporation.</li> <li>15. Charter limited to fifty years, &amp;c.</li> <li>16. Time for paying in capital stock extended one year.</li> <li>17. Right to run cars over ferries and lay tracks on boats and drops. Compensation therefor.</li> <li>18. Repeal of inconsistent acts.</li> <li>19. Extension of tracks authorized. Privileges and restrictions.</li> <li>20. May connect with Metropolitan tracks, &amp;c.</li> <li>21. Suffolk road may connect with the Metropolitan. Rights of entry and use defined.</li> <li>22. Conveyance of passengers to other roads and ferries provided for. Location and construction. Construction of track south of Cornhill prohibited, except, &amp;c.</li> <li>23. Metropolitan company may use tracks of Suffolk, Middlesex, and Cambridge companies. Mayor and aldermen to determine manner.</li> </ul> | <ul style="list-style-type: none"> <li>24. May construct track through Boylston, Providence, and Berkeley Streets on conditions.</li> <li>25. Broadway Company may use tracks of Suffolk, Middlesex, and Cambridge companies on conditions.</li> <li>26. Mutual agreement between Broadway, Metropolitan, and Suffolk companies authorized.</li> <li>27. The companies respectively may agree upon conditions, or commissioners appointed by supreme judicial court may fix and determine the same.</li> <li>28. Each company to conform to rules of other in use of tracks, except, &amp;c., and to render returns.</li> <li>29. In case of transfer of franchise by Suffolk company, the company purchasing may increase its capital.</li> <li>30. Failure for one year to use track located to render right void. If discontinued, streets to be put in good condition.</li> </ul> |
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*Locations.*

- 1. First Location, p. 596.
- 2. Second Location, p. 599.
- 3. Third Location, p. 600.
- 4. Fourth Location, p. 604.
- 5. Fifth Location, p. 605.
- 6. Sixth Location, p. 608.
- 7. Seventh Location, p. 611.
- 8. Eighth Location, p. 614.

SPECIAL ACTS.

1. George H. Plummer, Ebenezer Atkins, Edward F. Porter, David L. Webster, Asa Fisk, John G. Webster, and their associates and successors, are hereby made a corporation by the name of the Suffolk Railroad Company, with power to construct, maintain, and use a railway or railways, with convenient single or double tracks, commencing at such central point or points in the city of Boston as shall be fixed by the board of
- Corporators.  
1857, 285, § 1.  
  
Power to construct, &c.

Route of road.  
1857, 285, § 1.

aldermen of said city, with the assent of said corporation, expressed in writing and filed with said board of aldermen; thence upon and over such streets and highways of said city as shall from time to time be fixed and determined by said board of aldermen, with the written assent of said corporation filed as aforesaid, to some points at or near the western terminus of the Chelsea and each of the East Boston ferries; and again commencing at or near the eastern terminus of each of the East Boston ferries; thence upon and over Lewis, Border, Sumner, Meridian and Chelsea Streets, or either of said streets, or such other streets and highways in East Boston as shall from time to time be fixed and determined by the board of aldermen of said city, with the written assent of said corporation filed with said board of aldermen.

Tracks, how  
laid.  
Ibid. § 2.

2. All tracks of said railroad shall be laid at such distances from the sidewalks in said city as the board of aldermen, in their orders fixing the route of said railroad, may determine;

Rates of fare.

and said corporation shall have power to fix, from time to time, such rates of compensation for transporting persons and prop-

Powers and  
duties.

erty, as they may think expedient; and shall have all the powers and privileges, and be subject to all the duties, liabilities, and

City council  
may discon-  
tinue, &c.

restrictions set forth in the forty-fourth chapter of the Revised Statutes;<sup>1</sup> and *provided*, that any time after the expiration of one year from the opening for use of said railroad, in any street in which the same may be located, as provided by its charter, the city council of the city of Boston may, by vote of the majority, determine as to the said track, that the same or any part thereof be discontinued; and thereupon the location shall be deemed revoked, in conformity with such vote of the city council; *provided*, that such taking and removal shall be at the expense of the said railroad company. Notice to abutters on streets in which it may be proposed to lay the tracks of said corporation, shall be given by publication in one or more newspapers published in said city of Boston, of an order of notice from the board of aldermen of said city, fourteen days at least before the location of any such tracks.

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<sup>1</sup> See Gen. Stats. c. 68.

3. Said tracks or roads shall be operated and used by said corporation, with horse power only. The board of aldermen of said city shall have power, at all times, to make all such regulations, as to rate of speed and mode of use of said tracks, as the public convenience and safety may require.

Horse power only to be used. 1857, 283, § 3.

4. Said corporation shall maintain and keep in repair such portion of the streets as shall be occupied by their tracks, and shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect, or misconduct of any of its agents or servants, in the management, construction, or use of said track; and in case recovery shall be had against said city by reason of any such defect or want of repair, said corporation shall be liable to pay to said city any sums thus recovered against them, together with all costs and reasonable expenses incurred by said city, in the defence of any such suit or suits in which recovery may be had; and said corporation shall not encumber any portion of the streets not occupied by said road or tracks.

Corporation to keep streets, &c., in repair. Ibid. § 4.

5. If any person shall wilfully or maliciously injure said track or tracks, or obstruct said corporation in the use of said road or tracks, or the passing of the cars or carriages of said corporation thereon, such person, and all who shall be aiding or abetting therein, shall be punished by a fine not exceeding five hundred dollars, or may be imprisoned in the common jail for a period not exceeding three months.

Injury to tracks, &c., how punished. Ibid. § 5.

6. If said corporation, or its agents or servants, shall wilfully or maliciously obstruct any highway, or the passing of carriages over the same, such corporation shall be punished by a fine not exceeding five hundred dollars.

Corporation obstructing highways, &c.; liable to a penalty. Ibid. § 6.

7. The capital stock of said corporation shall not exceed three hundred thousand dollars, to be divided into shares of fifty dollars each; and no shares shall be issued for a less sum, to be actually paid in on each, than the par value of the shares which shall first be issued, without the written consent of each of the stockholders of said corporation.

Capital stock. Ibid. § 7.

8. Such corporation shall have power to purchase and hold such franchises, personal estate, and real estate as may be con-

Corporation may purchase real estate, &c.

1857, 285, § 8. venient or necessary for the purposes of the transportation of passengers and freight between said termini, and for the management of said road.

Board of aldermen may determine grade and alter route.  
Ibid. § 9.

9. The said road shall be constructed and maintained in such form and manner, and upon such grade, as the board of aldermen of said city may, in their votes fixing and determining the routes thereof as aforesaid, prescribe and direct; and whenever in the judgment of said railroad corporation it shall be necessary to alter the grade of any street so occupied by it, such alteration may be made at the sole expense of said corporation, provided the same shall be assented to by the board of aldermen of said city.

Act not to prevent authorities from taking up streets.  
Ibid. § 10.

10. Nothing in this act shall be construed to prevent the city authorities from entering upon and taking up any of the public streets or bridges traversed by said railroad, for the purposes for which they may now lawfully take up the same.

Act void unless accepted by city council and company, &c.  
Ibid. § 11.  
See § 16, p. 591.

11. This act shall be void so far as it relates to the right to construct said roads, unless the same shall be accepted by the city council of said city,<sup>1</sup> and also by the said corporation, and unless ten per centum of the capital stock thereof be paid in within two years after the passage thereof.

Returns.  
1857, 285, § 12.  
See G. S. c. 63,  
§ 139.

12. Said corporation shall be deemed a railroad corporation so far as to be subject to make such annual returns to the legislature as are or may be prescribed by law, but not to the other provisions of law in relation to railroad corporations.<sup>2</sup>

Boston may purchase franchise, &c.  
Ibid. § 13.

13. The city of Boston may at any time during the continuance of the charter of the said corporation, and after ten years from the opening of any part of the road for use, purchase of the said corporation all franchise, property, rights, and furniture of said corporation, by paying them therefor such a sum as will reimburse to each person who may be then a stockholder therein, the par value of his stock, together with a net profit of ten per cent. per annum from the time of the transfer of said stock to him on the books of the corporation, deducting the dividends received by said stockholder thereon.

<sup>1</sup> Accepted by the city council of Boston, December 17, 1858.

<sup>2</sup> See note, *ante*, p. 485, and *Assessment of Taxes*, post. § 60.

14. The corporation hereby created is authorized and empowered to lease or transfer all its property, rights, and privileges, or any part thereof, or of its tracks, to any other like corporation now existing, or which may hereafter be created, for the purpose of constructing a railroad track over and upon any part of the route contemplated by this act, on such terms and to such extent as may be mutually agreed upon between the parties; and make and execute any transfers, contracts, or agreements that may be deemed necessary or proper for the purpose; and the corporation receiving such transfer shall thereupon have and hold the portion or property so transferred with all the rights and privileges, and subject to the same restrictions and provisions as were applicable to this corporation.

Corporation may lease or transfer to any other corporation.  
1857, 285, §14.  
See *post*. p. 596, § 29.

15. The existence of said corporation is hereby limited to the period of fifty years from the passage of this act; *provided*, nevertheless, that the legislature may at any time repeal this act, or limit and restrict the powers herein granted.

Charter limited to fifty years, &c.  
Ibid. § 15.

16. The time allowed the Suffolk Railroad Company, by the eleventh section of the two hundred and eighty-fifth chapter of the Acts of the year eighteen hundred and fifty-seven, to pay in ten per centum of their capital stock, is hereby extended one year beyond the time now required by law.

Time for paying in capital stock extended one year.  
1850, 3.  
See § 11.

17. The Suffolk Railroad Company is authorized, by consent of the mayor and aldermen of the city of Boston, to run their cars over each of the ferries to East Boston; and for that purpose may lay on the ferry boats of the East Boston and People's Ferry Companies and the drops leading thereto, respectively, suitable tracks with the usual appurtenances thereto, for such rates of compensation as may be mutually agreed upon with each of said ferry companies; or in case of disagreement with either of said companies as to such rates of compensation, the same shall be fixed by said mayor and aldermen of said city of Boston.

Right to run cars over ferries and lay tracks on boats and drops; compensation therefor.  
1860, 207, § 1,

18. All acts and parts of acts inconsistent with this act are hereby repealed.

Repeal of inconsistent acts  
Ibid. § 2.

19. The board of aldermen of the city of Boston may extend the location of the tracks of the Suffolk Railroad Com-

Extension of tracks authorized.

1861, 191, § 1.

Privileges and restrictions.

May connect with Metropolitan tracks, &amp;c. Ibid. § 2.

See G. S. c. 63, § 117.

Suffolk road may connect with Metropolitan. 1862, 175, § 1.

Right of entry and use defined.

Conveyance of

pany over and upon such streets and highways of said city north of the southerly line of Kneeland, Eliot, or Boylston Streets, as may from time to time be fixed and determined by said board, with the consent in writing of said company; and said company may construct, maintain, and use such tracks as have been heretofore or may be hereafter located by said board, with all the powers and privileges, and subject to all the duties, liabilities, and restrictions in reference thereto, set forth in the act by which said company was incorporated.

20. Said board of aldermen may from time to time authorize said company to enter upon and use the tracks of the Metropolitan Railroad Company north of said southerly lines of said Kneeland, Eliot, or Boylston Streets, subject to such regulations as to the manner of such use as may from time to time be made by said board, for such annual compensation to be paid by said Suffolk Railroad Company to said Metropolitan Railroad Company, as may be mutually agreed upon, or in case of disagreement, as may be fixed by three commissioners to be appointed by the supreme judicial court, in the manner, and with the powers, so far as relates to determining such compensation provided in section one hundred and seventeen of the sixty-third chapter of the General Statutes.

21. The Suffolk Railroad Company is hereby authorized and empowered to connect its track, now down at the corner of Washington and Boylston Streets, with the track of the Metropolitan Railroad Company in said Boylston Street, with the right to enter upon and use, with its horses and cars used exclusively within the city of Boston, the tracks of the said Metropolitan Railroad in Cornhill, Washington, Boylston, and Tremont Streets, and the open space lying southerly of Scolay's Building, described in the route of location granted by the board of aldermen of the city of Boston, in an order passed January fifth, eighteen hundred and sixty-one, and accepted in writing by the said Suffolk Railroad Company, in such manner as shall from time to time be fixed and determined by the mayor and aldermen of the city of Boston.

22. The Suffolk Railroad Company is hereby authorized

and empowered to convey passengers by some central, direct, and convenient route or routes, to and from the several steam ferries and steam railroad depots, in the northerly part of said city, and the Boston and Providence, Boston and Worcester, and Old Colony and Fall River steam railroad depots respectively, and for this purpose to connect its tracks with, and to enter upon and use, with its horses and cars used exclusively within the said city of Boston, the tracks of any other railroad company laid in any streets or highways through which the said Suffolk Railroad Company has been, or shall be located, north of the southerly line of said depots by said mayor and aldermen, and for this purpose to construct, maintain, and use a railway or railways, with convenient single or double tracks, switches, curves, and turnouts, from their tracks in Causeway Street through Bowdoin Square to the track of the Metropolitan Railroad Company at the head of Cornhill, and over and upon such streets and highways of the city of Boston, as shall from time to time be fixed and determined by the mayor and aldermen of said city, and accepted in writing by said Suffolk Railroad Company; *provided*, that no cars shall be run by said Suffolk Railroad Company over the tracks of the Broadway Railroad Company, except by the consent of said Broadway Railroad Company; but the Suffolk Railroad Company shall construct no track south of Cornhill, except as provided by the fourth and fifth sections of this Act; and the said Suffolk Railroad Company may run its cars from the northerly depots and ferries through Boylston Street, and return, under the provisions of the first section of this Act, till the completion of the routes to the southerly depots.

passengers to  
other roads and  
ferries provided  
for.  
1862, 175, § 2.

Location and  
construction.

Construction  
of track south  
of Cornhill pro-  
hibited, except,  
&c.  
See *post*. p. 594,  
§§ 24, 25.  
Also *ante*,  
p. 592, § 21.

23. The Metropolitan Railroad Company is hereby authorized and empowered to enter upon and use with its Boston Neck cars, and also with its Tremont and Berkeley Street cars, the tracks and routes of locations that now are or may hereafter be granted to the Suffolk Railroad Company, and the tracks of the Middlesex and Cambridge Railroad Companies to and from the steam railroad depots in the northerly part of the city of Boston, described in the location of the Suffolk Railroad Company

Metropolitan  
Company may  
use tracks of  
Suffolk, Middle-  
sex, and Cam-  
bridge compa-  
nies.  
1862, 175, § 3.  
See *post*. p. 600.

1802, 175, § 3.

Mayor and aldermen to determine manner of use.

Metropolitan Railroad Company may construct track through Boylston, Providence, and Berkeley Streets, on conditions. Ibid. § 4.

granted by the board of aldermen of the city of Boston, in an order passed January five, eighteen hundred and sixty-one, and accepted in writing by the said Suffolk Railroad Company, in such manner as shall from time to time be fixed and determined by the mayor and aldermen of the said city of Boston.

24. The Metropolitan Railroad Company is hereby authorized and empowered to construct, maintain, and use a railway or railways with convenient single or double tracks, switches, curves, and turnouts from its track near the Winthrop House, in the said city of Boston, to the Boston and Providence Railroad depot, and through Providence and Berkeley Streets to its track near Dover Street, as shall from time to time be fixed and determined by the mayor and aldermen of the city of Boston, and accepted in writing by said Metropolitan Railroad Company; *provided*, that if the said Metropolitan Railroad Company shall not construct the track to and from the said Providence Railroad depot within one year,<sup>1</sup> the Suffolk Railroad Company may construct the same, to and from the said depot, as shall from time to time be fixed and determined by the mayor and aldermen of the city of Boston, the Metropolitan Railroad Company having the right to purchase the same within six months from the time of its completion by paying the cost of the same and interest thereon, and assuming all the conditions of construction and maintenance of the same imposed upon the Suffolk Railroad Company.

Broadway Railroad Company may use tracks of Suffolk, Middlesex, and Cambridge companies, on conditions. Ibid. § 5.

25. The Broadway Railroad Company is hereby authorized and empowered to enter upon and use, with its horses and cars run exclusively from South Boston, the tracks and routes of location of the Suffolk Railroad Company that now are or may hereafter be granted to the Suffolk Railroad Company, and the tracks of the Middlesex and Cambridge Railroad Companies to and from the steam railroad depots in the northerly part of the said city of Boston, as shall from time to time be fixed and determined by the mayor and aldermen of the city of Boston; *provided*, that the said Broadway Railroad Company shall not

<sup>1</sup> This track was not constructed by the Metropolitan Railroad Company within the time specified, and a location was granted to the Suffolk Railroad Company. See *Sixth Location*, post. p. 608.

be authorized to run any cars under the provisions of this section until such time as it shall consent to the use of its tracks by the said Suffolk Railroad Company to the Old Colony and Fall River, and Boston and Worcester steam railroad depots; and if the said Broadway Railroad Company, after such consent, shall not construct proper and convenient switches, curves, and turnout tracks at said depots, the Suffolk Railroad Company may construct the same in such manner as shall, from time to time, be fixed and determined by the mayor and aldermen of said city of Boston.

26. The Broadway, Metropolitan, and Suffolk Railroad Companies, respectively, are also further authorized and empowered, by voluntary agreements and arrangements, each with the other, and not otherwise, to enter upon and use with their horses and cars, respectively, any further portion of the tracks of each other in said city of Boston; *provided*, that such agreements and arrangements shall not be effective until approved by the mayor and aldermen of said city of Boston; and *provided*, that neither of said companies shall, under the provisions of this section, be empowered to enter upon any such track or tracks without the assent of the company owning the same.

Mutual agreement between Broadway, Metropolitan, and Suffolk companies authorized. Ibid. § 6.

27. The Broadway, Metropolitan, and Suffolk Railroad Companies shall, respectively, run such number of cars, and at such times, and shall pay such compensation to each other, and to any railroad company whose tracks they may enter upon and use, under the provisions of this act, as may be mutually agreed upon; and in case of disagreement as to the number of cars to be run, the time and manner of use of the said tracks, or the compensation to be paid to said railroad companies, the same shall be fixed and determined by three commissioners to be appointed by the supreme judicial court, the award of whom, or a major part of whom, reported to and confirmed by said court, shall be binding upon the respective corporations; and any such award may be revised or altered by commissioners appointed in like manner. The cost of the commission shall be apportioned upon the corporations interested, or any of them, as shall be just and equitable.

The companies respectively may agree upon conditions, or commissioners appointed by supreme judicial court may fix and determine the same. Ibid. § 7.

28. Each of the said companies, while using the tracks of

Each company

to conform to rules of other, in use of tracks, except, &c., and to render returns.  
1862, 175, § 8.

any other company, as authorized by this act, shall conform to the rules and regulations, from time to time established, of the respective companies whose tracks they use, except so far as modified by said commissioners, and shall keep an account of the number of cars run daily by them respectively, and, as nearly as may be, of the passengers by them transported daily upon the railroad they are thus using, and of the number of miles run by them daily thereon, and shall render the account of the same, at least weekly, to the treasurer of said last-named company.

In case of transfer of franchise by Suffolk Company, the company purchasing may increase its capital.  
Ibid. § 9.  
See *ante*, p. 591, § 14.

29. In case said Suffolk Railroad Company shall transfer its railroad and franchise to any other railroad company as provided in section fourteen of chapter two hundred and eighty-five of the Acts of the year eighteen hundred and fifty-seven, said last-named company may increase its capital to an amount not exceeding the cost of said railroad and appurtenances, and the cost of properly equipping the same; said increase not to exceed in the aggregate, the sum of two hundred thousand dollars.

Failure for one year to use track located to render right void.  
Ibid. § 10.

If discontinued, streets to be put in good condition.  
Ibid.

30. If either of the said corporations mentioned in this act shall neglect to occupy or use a location in any street or highway for one year from the time the said location was granted by the mayor and aldermen, the right to such portion of the said location or track shall thereupon become void; and in case any part of their track shall be discontinued, they shall remove the same from the streets and highways, and shall put them in as good condition for public travel as they were immediately before they were occupied by said corporations.

#### *First Location.*

First location.  
Dec. 31, 1859.

1. The Suffolk Railroad Company shall have the right to lay down a single track in several streets of the city of Boston, as follows: Commencing at or near the People's Ferry Company slip; thence over the avenue leading to Commercial Street; thence northerly in said Commercial Street to Hanover Street; thence in Hanover Street to Court Street; thence on the track of the Middlesex Railroad Company in Court Street and Tremont Row to the open space lying southerly of Scollay's

Building, so called; thence on the track of the Metropolitan Railroad Company in said open space and in Cornhill to Washington Street; thence on the track of said Middlesex Railroad Company in Washington Street, also in Dock Square and in Union Street; thence from Union Street to North Street; thence in North Street to North Square; [thence in North Square to Moon Street; thence in Moon Street to Fleet Street;<sup>1</sup>] thence easterly in said Fleet Street to Commercial Street; [thence in said Commercial Street to the avenue leading to the People's Ferry,<sup>2</sup>] with a right to lay down a track in Eastern Avenue, so called, to the East Boston Ferry Company's slip; also with the right to lay down a branch track in so much of that part of Hanover Street lying east of Commercial Street to a point at or near the Chelsea Ferry Company's slip, as is dedicated as a public street. The location hereby granted is with the express proviso and condition that the rails shall be laid at such distances from the edge-stones in the aforementioned streets as the committee on paving and the superintendent of streets shall designate, and shall be approved by them. It is further ordered, that the said Suffolk Railroad Company shall have a right to lay down a single track in several of the streets of that part of the city of Boston, called East Boston, viz: Commencing at or near the slip of the East Boston Ferry Company in Lewis Street; thence in said Lewis Street to Maverick Square; thence in the southeasterly side of said square to Chelsea Street; thence in said Chelsea Street to Chelsea Street Bridge. Again, commencing with a single track at or near the People's Ferry Company slip; thence in the avenue leading from said slip to Sumner Street; thence in said Sumner Street to Belmont Square.<sup>3</sup> Again, commencing on Maverick Square and uniting with the track on Sumner Street; thence in the northwesterly side of said square to Meridian Street; thence, with a double track, in said Meridian Street to the north end

First location.  
Dec. 31, 1859.

<sup>1</sup> Rescinded December 30, 1862. See *Seventh Location*, post. p. 613.

<sup>2</sup> Rescinded December 30, 1862. See *Seventh Location*, post. p. 613.

<sup>3</sup> The portion in Sumner Street, between Maverick Square and Orleans Street, rescinded September 2, 1863. See *Eighth Location*, post. p. 616.

First location.  
Dec. 31, 1859.

of Chelsea New Bridge, so called, with the right to construct suitable turnouts on Belmont Square, Central Square, and Maverick Square.

Also, with the right to lay down a single track in Saratoga Street, uniting with the tracks in Meridian Street. This location of the Suffolk Railroad is granted under the express proviso and condition that the said Suffolk Railroad Company shall, at all times, after the rails are laid down, keep in good order and complete repair, at their own expense, that portion of all streets through which the said rails may be laid in that part of the city of Boston called East Boston, and the avenues from the People's and East Boston Ferry Companies' slips to Commercial Street, lying within the rails, and also that part of the street lying outside of the rails and adjacent thereto, extending one foot and a half from and outside of each rail. Also, that said Suffolk Railroad Company shall, at all times after the rails are laid down, keep in good order and complete repair the whole of the roadway or cartway of the streets in which the track is located by this order in the city proper, viz : in Hanover, North, Moon, and Fleet Streets ; also, twenty-five feet of the roadway or cartway of Commercial Street and North Square, at their own expense, and to the satisfaction of the superintendent of streets ; and whenever the board of aldermen shall, from time to time, determine and order that any portion of the said streets through and in which the track is located by the terms of and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material, the whole expense thereof shall be paid by the said Suffolk Railroad Company ; the work to be done by the superintendent of streets, under the authority of the board of aldermen.

Also, under the further express proviso and condition, that the whole work of laying down the track granted by this order shall be done under the direction and to the satisfaction of the superintendent of streets. Also, that the form of rail to be laid down shall be satisfactory to the committee on paving and the superintendent of streets, and shall be approved by them. Also, that in laying down the rails, granite blocks of such size

as the superintendent of streets shall direct, shall be laid down inside and outside of each rail. Also, that the work of laying down the track granted under authority of this order, shall not be commenced before the first of April, eighteen hundred and sixty.

First location.  
Dec. 31, 1859.

Also, under the further express proviso and condition, that the compensation to be paid by the said Suffolk Railroad Company to the Metropolitan Railroad Company and the Middlesex Railroad Company, for running their cars over the tracks built by said Metropolitan and Middlesex Railroad Companies, shall be such as the board of aldermen, for the time being, shall prescribe, if the said corporations do not themselves mutually agree upon the terms.

Also, under the further express proviso and condition, that the board of aldermen reserve the right to allow any other horse railroad company to run cars over the track, the location of which is granted by this order.

Also, under the further express proviso and condition, that the said Suffolk Railroad Company shall accept this order of location, and agree to its several provisions and conditions within sixty days after its passage; otherwise it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on either side of the streets.

#### *Second Location.*

2. In addition to the right heretofore granted to the Suffolk Railroad Company to lay down tracks in several of the streets of the city of Boston, the said company shall have the right to lay down a single track in Court Street from Hanover Street to a point westerly of the westerly corner of Brattle Street, there to connect with the track of the Middlesex Railroad, said point of connection to be determined by the committee on paving and

Second location.  
June 25, 1860.

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<sup>1</sup> Accepted by Suffolk Railroad Company, January 7, 1860.

Second loca-  
tion.  
June 25, 1860.  
See *ante*, First  
Location.

the superintendent of streets. Also, in that part of the city called East Boston, [a single track in Orleans Street from Sumner Street to Webster Street,<sup>1</sup>] in Webster Street from Orleans Street to its junction with Sumner Street. The right to lay down these additional tracks is granted under the same express conditions and provisions as contained in the order of location of the Suffolk Railroad Company, passed December thirty-one, eighteen hundred and fifty-nine.

This order of location shall be null and void without the same is accepted by the said Suffolk Railroad Company within ten days of the date of its passage, and notice to that effect officially communicated in writing to the city clerk.<sup>2</sup>

### *Third Location.*

Third location.  
Jan. 5, 1861.

3. In addition to the rights heretofore granted to the Suffolk Railroad Company to lay down tracks in several of the streets of the city of Boston the said company shall have the further right to lay down single tracks with the necessary curves and turnouts, with permission to run their cars over the tracks of the Metropolitan, Middlesex, and Cambridge Railroads in certain streets as hereinafter provided, as follows :

Commencing in Washington Street, at or near the corner of Boylston Street, with a curve track to connect the track of the Metropolitan Railroad, in Washington Street, with their tracks on Boylston Street ; thence in Boylston and Tremont Streets, with permission to enter upon and use the tracks of the said Metropolitan Railroad in said streets to the open space southerly of Scollay's Building.

Again, commencing at the corner of Union and Hanover Streets, there connecting the track of the Suffolk Railroad, now down on said Hanover Street, by a curve track with the track of the Middlesex Railroad in Union Street ; thence upon the tracks of the said Middlesex Railroad in Union Street and Haymarket Square ; thence across the Middlesex Railroad tracks

<sup>1</sup> Rescinded September 2, 1863. See *Eighth Location*, post. p. 616.

<sup>2</sup> Accepted by Suffolk Railroad Company, June 26, 1860.

by a single track to Haverhill Street ; thence by a single track in the centre of Haverhill Street to Causeway Street ; thence westerly, by a single track in the centre of Causeway Street to Portland Street ; thence in Portland Street upon the tracks of the Cambridge Railroad Company, so far as they now are or hereafter may be constructed by said Cambridge Railroad Company, and if not constructed by that company, then upon a single track to be built by the said Suffolk Railroad Company ; thence by a single track across Merrimac Street to Portland Street ; thence by a single track in the centre of Portland Street to Sudbury Street, there to connect with the track of the Middlesex Railroad ; thence in Sudbury Street and Court Street, and in Tremont Row upon the tracks of the Middlesex Railroad to the open space in front of Scollay's Building ; thence in Cornhill and in Washington Street on the tracks of the Metropolitan Railroad to Boylston Street.

Third location.  
Jan. 5, 1861.

Again, commencing at the corner of North and Union Streets, there connecting the track of the said Suffolk Railroad by a curve track with the track of the Middlesex Railroad in Union Street, with the right to run cars over the same through Union Street to Hanover Street, thence across Hanover Street to the track of the Middlesex Railroad to Union Street.

The right to lay down these additional tracks in Haverhill, Causeway, and Portland Streets, is granted under the express proviso and condition that the said Suffolk Railroad Company shall make a correct return to the board of aldermen of the number of cars used upon the tracks of the said Suffolk Railroad Company, and run and owned by them, and shall pay into the city treasury for each successive six months ending with the months of December and June in each year, the sum of one dollar for each car run over the tracks of said Suffolk Railroad, within ten days from the day said return was due ; *provided*, that said sum may be at any time increased or decreased by the board of aldermen, whenever it may see fit ; and *provided*, *further*, that said company shall acquire no right not otherwise granted to it by the payment of said sum.

Also, under the further express proviso and condition, that

Third location.  
Jan. 5, 1861.

the board of aldermen reserve the right to permit any other horse or street railroad company to run cars over the new tracks, authorized to be constructed by authority of this order, and also to regulate the number of cars which may be run to and from the depots on Causeway Street by this or any other company, and it is expressly provided that the Metropolitan Railroad Company may run such number of cars to and from the said depots over the track granted by authority of this order as the board of aldermen shall from time to time prescribe, not exceeding one half of the whole number; upon the express condition however, and not otherwise, that the said Metropolitan Railroad Company shall give their assent in writing, which said assent shall be filed with the city clerk, that the Suffolk Railroad Company may run their cars over the tracks of the said Metropolitan Railroad Company in Washington, Boylston, and Tremont Streets, as provided in this order.<sup>1</sup>

Also, under the further express proviso and condition, that at the time of laying down of the tracks in Causeway Street, the portion of the said street through which the tracks are laid shall be wholly repaved with the same material which now forms the pavement, now down on said street, by said Suffolk Railroad Company.

Also, under the further express proviso and condition, that said Suffolk Railroad Company shall, at all times after the rails are laid down, keep in good order and complete repair the whole of the roadway or cartway of that portion of the streets in which the tracks are located by this order, at their own expense, and to the satisfaction of the superintendent of streets; and whenever the board of aldermen shall, from time to time, determine and order that any of that portion of the said streets through and in which the tracks are located, by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone material, the whole expense of such paving shall be paid by the said Suffolk Railroad Company, the work to be done by the superintendent of streets, under the authority of the board of aldermen.

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<sup>1</sup> Said assent has not been filed with the city clerk. But see *Fourth Location*, post. p. 604.

Also, under the further express proviso and condition, that Third location.  
Jan. 5, 1861. the whole work of laying down the tracks granted under the authority of this order of location, shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and that the form of rail shall be satisfactory to the committee on paving and the superintendent of streets, and shall be approved by them. Also, that the repaving of that portion of Causeway Street, specified in this order, shall be at such "crown" as the superintendent of streets shall determine, and the said work to be done under his supervision and direction.

Also, under the further express proviso and condition, that in the construction of the said tracks, granite blocks of such dimensions as the superintendent of streets shall direct, shall be laid down inside and outside of each rail.

Also, under the further express proviso and condition, that the right to enter upon and run the cars over the tracks of the Metropolitan, Middlesex, and Cambridge Railroad Companies under authority of this order, shall be upon the condition that said Suffolk Railroad Company shall pay to said Metropolitan, Middlesex, and Cambridge Railroad Companies such compensation for the use of their several tracks as may be agreed upon by the respective companies, and in case of disagreement, the compensation to be thus paid shall be determined by the board of aldermen for the time being.

Also, under the further express proviso and condition, that See Fourth  
Location, *post.*  
p. 604. said Suffolk Railroad Company shall run no cars over the tracks of the Metropolitan Railroad Company in Boylston or Tremont Streets, to wit, in Boylston Street from Washington to Tremont Street, — in Tremont Street from Boylston to Bromfield Street without the assent of said Metropolitan Railroad Company.

Also, under the further express proviso and condition, that the single tracks authorized to be located by authority of this order, shall be laid down on or before June one, eighteen hundred and sixty-one; otherwise the right so granted shall cease and be of no effect.

Also, under the further express proviso and condition to the

Third location,  
Jan. 5, 1861.

location granted under the authority of this order, that said Suffolk Railroad Company shall accept this said order of location and agree to comply with its several provisions and conditions in writing within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk; otherwise it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole space between the edge-stones supporting the sidewalks on both sides of the street.<sup>2</sup>

#### *Fourth Location.*

Fourth loca-  
tion,  
June 11, 1862.

4. The Suffolk Railroad Company is authorized to connect their curve track, at the corner of Washington and Boylston Streets, with the track of the Metropolitan Railroad in Boylston Street, under the direction and supervision of the superintendent of streets, and in such manner as he shall prescribe, and to run their cars from East Boston and the ferries, not to exceed eight each hour, through Washington, Boylston, and Tremont Streets, and the open space lying southerly of Scollay's Building, and Cornhill, upon the track of the Metropolitan Railroad, for a compensation to be fixed according to law, subject to such restrictions and regulations for the convenience of public travel as the board of aldermen shall, from time to time, decide that the public good requires.

The authority to connect the curve track and to run the cars over the Metropolitan Railroad tracks granted in this order, is under the express proviso and condition that the board of aldermen reserves the right, as it has done in the location granted to said Suffolk Railroad Company, January five, eighteen hundred and sixty-one, and accepted by said company January twelve, eighteen hundred and sixty-one, to permit any other horse or street railroad company to run cars over the curve track in Washington Street and Boylston Street.

See Third Loca-  
tion, *ante*,  
p. 600.

<sup>1</sup> Accepted by Suffolk Railroad Company, January 12, 1861.

<sup>2</sup> A location granted to Suffolk Railroad Company, October 21, 1861, was not accepted by said company, and is void. See City Doc. 1861, No. 59.

Also, under the further express proviso and condition, that said Suffolk Railroad Company shall accept this said order of <sup>Fourth location.</sup> June 11, 1862. location and agree to comply with its provisions and conditions, in writing, in twenty days of the date of its passage, and file said acceptance and agreement with the city clerk; otherwise it shall be null and void.<sup>1</sup>

*Fifth Location.*

5. In addition to the rights heretofore granted to the Suffolk Railroad Company to lay down tracks in the streets of the city of Boston, the said company shall have the further right to lay down a single track, with curve, in both directions from the Metropolitan track near Scollay's Building, through Court Street on the easterly side of Scollay's Building to their present track at the head of Hanover Street. <sup>Fifth location.</sup> Oct. 20, 1862.

Also, to lay down a single track, with curves, in both directions from their track in Hanover Street at Fleet Street, thence in the centre of Fleet Street to their present track in Fleet Street.

Also, to lay down a single track from their track at the head of the avenue leading to the People's Ferry, on the northerly side of Battery Street to Hanover Street, with a curved track to connect with their track now down in Hanover Street.

Also, to lay down a single track, with a curve, from the track hereby authorized in Fleet Street, on the easterly side of Garden-Court Street, and on the westerly side of North Square, to their present track in North Square near North Street.

Also, to lay down a single track from their track near the head of North Street, on the westerly side of Faneuil Hall Square, and through Dock Square and Washington Street, to the track of the Middlesex Railroad in Washington Street; thence to run their cars for a short distance on the Middlesex track in Washington Street; thence to lay down a curve track in Washington Street from the Middlesex track to the Metropolitan track southerly of Cornhill.

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<sup>1</sup> Accepted by Suffolk Railroad Company, June 11, 1862.

Fifth location.  
Oct. 20, 1862.

Also, to lay down a single track from the track hereby authorized in Dock Square, in the centre of Brattle Street to Court Street, with a proper curve and track to connect with their track now down in Court Street.

Also, to lay down a curve track at the northwesterly corner of Hanover and Union Streets, to connect their track in Hanover Street with the track of the Middlesex Railroad in Union Street.

The direction of running the cars over the tracks laid down by the authority of this order, shall be as follows, until such time as the board of aldermen shall otherwise determine :

*For the Ferry Route.* — From the ferries up Battery and up Hanover Streets, through Fleet, up Garden-Court Street, up North Square, North Street, Dock Square, Washington Street, through Boylston Street ; returning, down Tremont Street and the open space lying southerly of Scollay's Building, down Court, Hanover, Fleet, and Commercial Streets to the several ferries, for the cars run exclusively within the limits of the city of Boston.<sup>1</sup> And from Dock Square up Brattle Street to Court Street, and returning, thence down to the ferries, for all cars run from without the limits of the city, and also for such city cars as shall be convenient in completing the routes.

*For the Depot Route.* — From the several steam passenger depots on Causeway Street up Portland, Sudbury, and Court Streets, down Cornhill, up Washington, through Boylston ; returning, down Tremont Street and the open space lying southerly of Scollay's Building, down Court, Hanover, and Union Streets, through Haymarket Square, down Haverhill and through Causeway Streets to the several depots.

The right to lay down this additional track is under the express proviso and condition that the said Suffolk Railroad Company shall, at all times after the rails are laid down, keep in good order and complete repair the whole of the roadway or cartway of the streets in which the tracks are located by this order. Also, twenty-five feet of the roadway or cartway of

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<sup>1</sup> Altered December 30, 1862. See *post.* p. 612.

North Square, at their own expense, and to the satisfaction of Fifth location.  
Oct. 20, 1862. the superintendent of streets; and whenever the board of aldermen shall, from time to time, determine and order that any portion of said streets through and in which the track is located by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone materials, the whole expense thereof shall be paid by said Suffolk Railroad Company, — the work to be done by the superintendent of streets, under the authority of the board of aldermen; *provided*, that where any of said tracks are laid in portions of streets through which any other horse railroad company has been located, the expense of repairs and paving such portions of said streets shall be borne equally by the corporations constructing tracks therein.

Also, under the further express proviso and condition, that the whole work of laying down the track granted by this order, and the precise location of the track to be laid down, and the form of rail to be used, shall be under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and shall be approved by them.

Also, under the further express proviso and condition, that the right to enter upon and run cars over the tracks of the Middlesex and Metropolitan Railroad Companies under authority of this order, shall be upon the condition that said Suffolk Railroad Company shall pay to said Middlesex and Metropolitan Railroad Companies such compensation for the use of their tracks as may be agreed upon by the respective companies, and in case of disagreement, the compensation to be thus paid shall be determined according to law.

Also, under the further express proviso and condition, that the board of aldermen reserve the right to allow any other horse railroad company to run cars over the tracks located by the authority of this order.

Also, under the further express proviso and condition, that said Suffolk Railroad Company shall take up their tracks now laid down in Moon Street and on the easterly side of North Square, so far as the same shall not be used after the completion

Fifth location.  
Oct. 20, 1862.

of the tracks under this location, and shall repave the said Moon Street and North Square where the tracks shall have been so taken up, in a manner satisfactory to the committee on paving and superintendent of streets.

Also, under the further express proviso and condition, that the said Suffolk Railroad Company shall accept this order of location, and agree to its several provisions and conditions within ten days from the date of its passage, and shall file the same with the city clerk; otherwise, it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole of the space between the edge-stones supporting the sidewalk on either side.

#### *Sixth Location.*

Sixth location.  
Oct. 20, 1862.

6. In addition to the rights heretofore granted to the Suffolk Railroad Company to lay down tracks in the streets of the city of Boston, the said company shall have the further right to lay down a single track in Causeway Street, from the Middlesex track in Beverly Street to Haverhill Street; thence to lay down in connection with their tracks and the tracks of the Cambridge Railroad, a double track in Causeway Street, from Haverhill Street to Portland Street; thence a single track in Causeway, Leverett, and Green Streets, to Bowdoin Square; thence in Bowdoin Square a double track to Bulfinch Street; thence in Court Street to Sudbury Street a single track; thence in Court Street to lay down a single track to the northerly end of Scollay's Building, in connection with their present track and the track of the Middlesex Railroad; thence on the easterly side of Scollay's Building over their single track to the Metropolitan Railroad at the head of Cornhill, as heretofore granted.

See *post.* p. 610.

Also, to lay down a single track from the Middlesex track on the easterly side of Haymarket Square [and in Blackstone Street to North Street,<sup>2</sup>] and to lay down side tracks at the Lowell, Eastern, and Fitchburg steam railroad depots, all with proper switches, curves, and turnout tracks.

<sup>1</sup> Accepted by Suffolk Railroad Company, October 20, 1862.

<sup>2</sup> Rescinded September 2, 1863. See *Eighth Location*, *post.* p. 616.

Also, to run their cars over the tracks of the Cambridge Railroad in Causeway, Green, Chambers, Cambridge, Portland, Merrimac, and Chardon Streets; and over the tracks of the Middlesex Railroad in Beverly and Charlestown Streets, Haymarket Square, Union Street, Dock Square, and Washington Street, and over the tracks of the Metropolitan Railroad in Cornhill, Washington, Boylston, and Tremont Streets. The right to lay down this additional track is under the express proviso and condition that the Cambridge Railroad Company shall have the right to use the tracks of the Suffolk Railroad herein located in Green and Leverett Streets, and in Causeway Street to Lowell Street, and make their election of the direction of running the cars over the same free of expense for all cars run from the city of Cambridge, and that the Suffolk Railroad Company in return therefor shall have the right to use the tracks of the Cambridge Railroad Company in Chardon Street now or hereafter built, and in Causeway and Portland Streets, free of expense, and that the Suffolk Railroad Company shall also receive compensation for all cars using said track in Chardon, Portland, and Causeway Streets, except for those run from the city of Cambridge, and that the said Suffolk Railroad Company shall further have the right to run a return route from the steam railroad stations in the northerly part of the city, and to run a Boylston Street route over the tracks of the Cambridge Railroad through Green, Chambers, and Cambridge Streets and Bowdoin Square free of expense, and that the Suffolk Railroad Company shall also receive compensation for all cars using said routes except those run from the city of Cambridge.

Also, under the further express proviso and condition, that the Suffolk Railroad Company, as provided in the location of the Cambridge Railroad Company, shall receive the checks of the Cambridge Railroad Company sold in the cars and to the passengers of the Cambridge Railroad Company only, and good to Boylston Street and return, or to the railroad stations in the northerly part of the city and return, and receive the tickets issued by the Cambridge Railroad Company good from any point on the Cambridge Railroad in Boston to Boylston Street,

Sixth location. or to the railroad stations in the northerly part of the city, in  
 Oct. 20, 1862. all cars run by said Suffolk Railroad Company over said Char-  
 don, Causeway, or Green Street tracks, said Cambridge Rail-  
 road Company redeeming said checks for five cents, and said  
 tickets for three cents each.

Also, under the further express proviso and condition, that if  
 the Suffolk Railroad Company shall neglect to construct the  
 tracks in Green and Leverett Streets, as authorized by their  
 See *ante*, p. 608. location, before July, eighteen hundred and sixty-three, the  
 Cambridge Railroad Company may construct with the consent  
 of the board of aldermen the same for the Suffolk Railroad  
 Company, in which case the ownership of said tracks and the  
 control thereof shall be in the Cambridge Railroad Company  
 until the Suffolk Railroad Company shall pay for the same.

The right to lay down these tracks is granted under the  
 express proviso and condition to this location, that said cor-  
 poration shall at all times after the rails are laid down, keep in  
 good order and complete repair the whole of that part of the  
 roadway or cartway of the streets in which the tracks are laid,  
 at their own expense, and to the satisfaction of the superintend-  
 ent of streets; and whenever the board of aldermen shall from  
 time to time determine and order that any of the said streets as  
 above mentioned, through and in which the tracks are located  
 by the terms and under the authority of this order, shall be  
 repaved with what they deem to be the best of stone material,  
 the whole expense of such paving shall be paid by said Suffolk  
 Railroad Company, — the work to be done by the superintend-  
 ent of streets, under the authority of the board of aldermen;  
*provided*, that where any of said tracks are laid in portions of  
 streets through which any other horse railroad company is  
 located, the expense of repairs and paving such portions of said  
 streets shall be borne equally by the corporations constructing  
 tracks therein.

Also, under the further express proviso and condition, that  
 the whole work of laying down the track granted by this order,  
 and the precise location of the track to be laid down, and the  
 form of rail to be used, shall be under the direction and to the

satisfaction of the committee on paving, and the superintendent of streets, and shall be approved by them. Sixth location.  
Oct. 20, 1862.

Also, under the express proviso and condition, that the right to enter upon and run cars over the tracks of the Middlesex and Metropolitan Railroad Companies, under authority of this order, shall be upon the condition that said Suffolk Railroad Company shall pay to said Middlesex and Metropolitan Railroad Companies such compensation for the use of their tracks as may be agreed upon by the respective companies, and in case of disagreement, the compensation to be thus paid shall be determined according to law.

Also, under the further express proviso and condition, that the board of aldermen reserve the right to allow any other horse railroad company to run cars over the tracks located by the authority of this order, for such compensation, to be paid to the Suffolk Railroad Company, as may be mutually agreed upon; or in case of disagreement, the compensation to be thus paid shall be determined according to law.

Also, under the further express proviso and condition, that the said Suffolk Railroad Company shall accept this order of location, and agree to its several provisions and conditions within ten days from the date of its passage; and shall file the same with the city clerk; otherwise it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole of the space between the edge-stones supporting the sidewalk on either side.

#### *Seventh Location.*

7. In addition to the rights heretofore granted to the Suffolk Railroad Company to lay down tracks in the streets of the city of Boston, the said company shall have the further right to lay down a single track, with curves in both directions from their track, in Hanover Street at Richmond Street, thence in the centre of Richmond Street to North Street, with curves in both directions to connect with their present track in North Street. Seventh location.  
Dec. 30, 1862.

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<sup>1</sup> Accepted by the Suffolk Railroad Company, October 20, 1862.

Seventh loca-  
tion.  
Dec. 30, 1862.

Also, to lay down a single track from their track at North Square through North Street, to their track at the avenue leading to the People's Ferry, with a curved track at Fleet Street to connect with their track now down in Fleet Street.

Also, to lay down an additional single track to the East Boston Ferry from the curve hereby authorized on Fleet Street, and on the avenue leading to the said ferry.

The direction of running the cars over the tracks laid down by the authority of this order, shall be as follows, until such time as the board of aldermen shall otherwise determine : —

*For the Ferry Routes.* — From the ferries up Battery, up Fleet and up Hanover Streets to and through Richmond Street up North Street, Dock Square, Washington Street through Boylston Street ; returning, down Tremont Street and the open space lying southerly of Scollay's Building, down Court, Hanover, Richmond, North, and Commercial Streets to the several ferries, for the cars run exclusively within the limits of the city of Boston. And from Dock Square up Brattle Street to Court Street and returning thence down to the ferries, for all cars run from without the limits of the city, and also for such city cars as shall be convenient in completing the routes.

See *ante*, p. 606.

The right to lay down this additional track is under the express proviso and condition that the said Suffolk Railroad Company shall, at all times after the rails are laid down, keep in good order and complete repair the whole of the roadway or cartway of the streets in which the tracks are located by this order, at their own expense, and to the satisfaction of the superintendent of streets ; and whenever the board of aldermen shall from time to time determine and order that any portion of said streets through and in which the track is located by the terms and under the authority of this order, shall be repaved with what they shall deem to be the best of stone materials, the whole expense thereof shall be paid by said Suffolk Railroad Company ; the work to be done by the superintendent of streets, under the authority of the board of aldermen ; *provided*, that where any of said tracks are laid in portions of streets through which any other horse railroad company has been located, the expense of

repairs and paving such portions of said streets shall be borne equally by the corporations owning tracks therein.

Seventh location.  
Dec. 30, 1862.

Also, under the further express proviso and condition, that the whole work of laying down the track granted by this order, and the precise location of the track to be laid down, and the form of rail to be used, shall be under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and shall be approved by them.

Also, under the further express proviso and condition, that the board of aldermen reserve the right to allow any other horse railroad company to run cars over the tracks located by the authority of this order, for such compensation for the use of their tracks as may be agreed upon by the respective companies; and in case of disagreement, the compensation to be thus paid shall be determined according to law.

Also, under the further express proviso and condition, that the location of said Suffolk Railroad Company in Garden-Court Street and on the westerly side of North Square is hereby discontinued; that said Suffolk Railroad Company shall at their own expense take up their tracks now laid down in Moon Street and the easterly side of North Square, in Commercial Street, *ibid.* from the East Boston Ferry Avenue to the People's Ferry Avenue, so far as the same shall not be used after the completion of the tracks under this location, and shall repave the said street where the tracks shall have been so taken up, in a manner satisfactory to the committee on paving and superintendent of streets.

Also, under the further express proviso and condition, that the said Suffolk Railroad Company shall accept this order of location, and agree to its several provisions and conditions, within ten days from the date of its passage, and shall file the same with the city clerk; otherwise, it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole of the space between the edge-stones supporting the sidewalk on either side.

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<sup>1</sup> Accepted by the Suffolk Railroad Company, January 2, 1863.

*Eighth Location.*

Eighth loca-  
tion,  
Sept. 2, 1863.

8. In addition to the rights heretofore granted to the Suffolk Railroad Company, to lay down tracks through the streets of the city of Boston, said company shall have the further right to lay down a single track in Webster Street from their present track in Webster Street, near Orleans Street, and connect with their track in Lewis Street, and to connect their track with, and enter upon and use, with their horses and cars, the track of the East Boston Wharf Company's Railroad, with consent of owners thereof, in said Webster Street, between the tracks of the Eastern Railroad Company and the tracks of the Suffolk Railroad Company in Lewis Street.

Also, to lay down an additional track in Lewis Street, from Maverick Square to the ferry slips of the East Boston Ferry Company, with proper and convenient tracks and switches at said ferry, so as to enable said company to run their cars upon and over the drops and boats of said East Boston Ferry Company to and from the city of Boston.

Also, to lay down a single track from the track of said Suffolk Railroad Company in Faneuil Hall Square, through Union Street and Haymarket Square, to their present track in Haverhill Street.

Also, to lay down in Boylston Street a single track with sufficient double track for the cars to pass conveniently from the Metropolitan Railroad Company's tracks near the Winthrop House to Park Square, and a double track in Park Square to the northerly passenger entrance of the Boston and Providence Railroad depot on Park Square.

Also, to extend their turnout track in Beverly Street northeasterly of the Fitchburg Railroad depot, in a northerly direction to the line of the Warren Bridge, at a distance of at least twenty feet from the edge-stone on the easterly side of said depot building, except for a short distance near the northerly end of said depot; and to construct proper and convenient turnout tracks at the Boston and Maine and at the Boston and Providence Railroad depots.

Also, to maintain their track as now constructed in Court Street near Bulfinch Street. Eighth location.  
Sept. 2, 1863.

Also, with the written consent of the Middlesex Railroad Company, to exchange tracks with said Middlesex Railroad Company between the head of North Street and the foot of Cornhill, so that the Suffolk Railroad Company's cars may run on the northwesterly side of Union Street, Dock Square, and Washington Street, and the Middlesex Railroad Company's cars may run on the southeasterly side of Union Street, Faneuil Hall Square, Dock Square, and Washington Street, with the right to construct the necessary tracks and curves to connect with the tracks of said Suffolk Railroad Company already built and hereby authorized to be built, and the tracks of the said Middlesex Railroad Company respectively. Said written consent to be filed with the city clerk before the change of tracks under this provision is commenced. Nothing authorizing this change of tracks shall be construed to impair the obligations of the respective companies in relation to their promises and obligations which they have respectively entered into with the city of Boston for keeping in good and complete repair and repaving the streets in which the change takes place.

The location of a single track in Union Street is granted under the express proviso and condition to the location, that it shall not be laid down until the assent is given in writing by the Middlesex Railroad Company, and said assent filed with the city clerk, that the track of the said Middlesex Railroad Company now located and laid upon said Union Street, shall be so changed that when the two tracks shall have been laid down, they shall occupy the centre of the cartway or roadway, so that the distance shall be the same from the outer rail of each track to the edge-stone supporting the sidewalk on either side.

The right to lay down these additional tracks is under the further express proviso and condition that the said Suffolk Railroad Company shall at all times after the rails are laid down keep in good order and complete repair, at their own expense, that portion of said Lewis and Webster Streets through which said rails may be laid, and also that part of said streets lying

Eighth loca-  
tion.  
Sept. 2, 1863.

outside of the rails and adjacent thereto, extending two feet from and outside of each rail; also the whole of the roadway or cartway of Boylston Street, between Tremont Street and Park Square, and of Park Square.

Also, one half of the roadway or cartway of Beverly Street lying next to the Fitchburg Railroad depot building on said street.

Also, under the further express proviso and condition, that the said Suffolk Railroad Company shall, at all times after they commence running their cars in Union Street and Haymarket Square, pay to the Middlesex Railroad Company one half of all the expenses which the said Middlesex Railroad Company shall incur or be subject to in keeping in good order and complete repair and repaving the whole of said Union Street and Haymarket Square, in accordance with the provisions of the third location granted to the said Middlesex Railroad Company by the board of aldermen, the thirty-first day of December in the year one thousand eight hundred and fifty-nine.

See *ante*, p. 583.

See *ante*, pp.  
597, 600.

Also, under the further express proviso and condition, that the location of said Suffolk Railroad Company is discontinued in Sumner Street from Maverick Square to Orleans Street, and in Orleans Street from Sumner to Webster Street, and said Suffolk Railroad Company shall at their own expense take up the tracks now laid there after the completion of the tracks under this location, and shall repave where the tracks shall have been so taken up in a manner satisfactory to the committee on paving and the superintendent of streets.

Also, under the further express proviso and condition, that the location granted to said Suffolk Railroad Company, October twenty, eighteen hundred and sixty-two, to construct a single track in Blackstone Street, between Haymarket Square and North Street, be, and the same is hereby, rescinded.

See *ante*, p. 608.

Also, under the further express proviso and condition, that the said Suffolk Railroad Company, after the rails are laid down, whenever the board of aldermen shall, from time to time, determine and order that any portion or portions of said streets through and in which the track is located by the terms and

under the authority of this order, shall be repaved with what they shall deem to be the best of stone materials, the expense of such portions as said Suffolk Railroad Company are obliged to keep in repair under the conditions of this location shall be paid by said Suffolk Railroad Company ; the work to be done by the superintendent of streets, under the authority of the board of aldermen.

Eighth location.  
Sept. 2, 1863.

Also, under the further express proviso and condition, that the whole work of laying down the tracks granted by this order, and the precise location of the track to be laid down, and the form of rail to be used, shall be under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and shall be approved by them.

Also, under the further express proviso and condition, that the board of aldermen reserve the right to allow any other horse railroad company to run cars over the tracks located by the authority of this order, for such compensation for the use of their tracks as may be agreed upon by the respective companies ; and in case of disagreement, the compensation to be thus paid shall be determined according to law.

Also, under the further express proviso and condition, that the said Suffolk Railroad Company shall accept this order of location, and agree to its several provisions and conditions, within ten days from the date of its passage, and shall file the same with the city clerk ; otherwise, it shall be null and void.<sup>1</sup>

The roadway or cartway mentioned in this order is to include the whole of the space between the edge-stones supporting the sidewalk on either side.

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<sup>1</sup> Accepted by the Suffolk Railroad Company, September 3, 1863.

## WINNISIMMET HORSE RAILROAD.

## STATUTES.

1. Incorporation of company.
2. Authorized to run over Winnisimmet Ferry.
3. Authorized to connect with any

horse railroads in Boston as may be fixed by mayor and aldermen.

Location, p. 619.

## SPECIAL ACTS.

Incorporation.  
1857, 227, § 1.

1. The Winnisimmet Railroad Company, incorporated by an act approved May twenty-six, eighteen hundred and fifty-seven, is authorized to construct, maintain, and use a railway or railways with convenient single or double tracks, between Chelsea or Winnisimmet Ferry, and some convenient point in or near that portion of Chelsea called Prattville, upon the following routes, viz: Beginning on Winnisimmet Street in said Chelsea, at or near the Winnisimmet Ferry; thence upon and over said Winnisimmet Street, and over and upon Broadway, so called, or streets parallel therewith, to Washington Avenue; upon and over Washington Avenue to Woodlawn Cemetery, or some convenient part of Prattville, so called, as the city council of Chelsea shall fix and determine. The said corporation shall have power to fix, from time to time, such rates of compensation for transporting persons or property as they may deem expedient, not exceeding five cents for each passenger, and shall have all the powers and privileges, and be subject to all the duties, liabilities, and restrictions set forth in the forty-fourth chapter of the Revised Statutes.<sup>1</sup>

Company  
authorized to  
run its cars  
over the  
Winnisimmet  
Ferry, &c.  
1861, 18, § 1.

2. The Winnisimmet Railroad Company is authorized to run its cars over the Winnisimmet Ferry and the passageways leading thereto, and belonging to said ferry; and for that purpose may construct, maintain, and use tracks, switches, and turnouts with the necessary appurtenances, upon and over the boats, drops, and passageways belonging to the Winnisimmet Ferry Company for such rates of compensation as may be mutually agreed upon by said companies; and in case of disagreement between said companies as to such rates of compensation,

<sup>1</sup> See Gen. Stats. c. 68.

the same shall be fixed by three commissioners to be appointed 1861, 18, § 1.  
by the supreme judicial court.

3. The Winnisimmet Railroad Company is authorized to enter upon and use with its horses and cars, the tracks of any other horse railroad company in the city of Boston, for transporting its own passengers to and from Scollay's Building, so called, in Court Street in said Boston, or such point northerly of Cornhill as shall from time to time be fixed by the mayor and aldermen of the city of Boston, subject to the convenience of the corporations owning the tracks which it may be necessary to use for such purpose, and subject also to the permission of the mayor and aldermen of said city, and such regulations as they may establish in regard to such use, and for such rates of compensation as may be agreed upon, or in case of disagreement with either of the companies whose tracks shall be so used, the same shall be fixed by three commissioners appointed by the supreme judicial court.

Company may  
use tracks of  
any other road  
in Boston.  
1862, 191, § 1.

#### LOCATION.

In accordance with the provisions of an act of the general court of Massachusetts, passed April thirty, eighteen hundred and sixty-two, the Winnisimmet Railroad Company is hereby authorized to enter upon and use with its horses and cars the tracks of the Suffolk Horse Railroad Company, for the purpose of transporting its own passengers to and from Scollay's Building, so called, in Court Street, and the Chelsea Ferry landing at the foot of Hanover Street, for such rates of compensation as may be agreed upon with said Suffolk Railroad Company, or in case of disagreement, the same shall be fixed according to the provisions of said act.

Location.  
Aug. 18, 1863.

The right to run said cars by the Winnisimmet Railroad Company is granted under the express proviso and condition that said company hereby agrees to comply with the general rules and regulations which the board of aldermen have adopted, and shall from time to time adopt, to govern the running of horse cars.

Aug. 18, 1863.

Also, under the further express proviso and condition, that said Winnisimmet Railroad Company shall be subject to such rules, regulations, and restrictions as to the running of cars authorized by this order, as the board of aldermen shall from time to time establish.

Also, under the further express proviso and condition, that if the Winnisimmet Railroad Company do not accept this privilege and regulation, and agree to comply with its provisions and conditions in writing, within twenty days from the date of its passage, and file said acceptance with the city clerk, the same shall be null and void.<sup>1</sup>

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## REGISTRY AND RETURNS OF BIRTHS, MARRIAGES, AND DEATHS.

### STATUTES.

1. City and town clerks to record births, marriages, and deaths.
2. Parents and others to give notice of births and deaths.
3. Physician to certify, &c. Penalty.
4. Sextons and others to make returns to city and town clerks. Clerks to give certificates. Penalties.
5. Clerk to transmit copies of records to secretary.
6. Record of clerk or certificate thereof to be evidence.
7. Clerk, fees of, &c. Penalty.
8. Superintendents of state almshouses to record, return, &c., facts in relation to births, &c.
9. Secretary to furnish blank books and forms for returns.

10. Secretary to cause returns to be bound, &c.; to report to legislature, &c.
11. Registrars may be chosen in certain cases.
12. Secretary to prosecute for penalty.
13. Towns may make additional rules, &c.

### ORDINANCE.

1. City registrar to be elected; tenure of office; vacancies, how filled.
2. To perform duties of clerks and registrars in relation to births, marriages, and deaths.
3. To report to city council.
4. Assistant registrars.
5. Compensation of registrar.
6. Compensation of undertakers.

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<sup>1</sup> Accepted by Winnisimmet Railroad Company, August 22, 1863.

## STATUTES.

1. The clerk of each city and town shall receive or obtain, City and town clerks to record births, marriages, and deaths. and record and index, the following facts concerning the births, marriages, and deaths therein, separately numbering and recording the same in the order in which he receives them, G. S. 21, § 1. designating in separate columns ;

In the record of births, the date of the birth, the place of birth, the name of the child, (if it have any,) the sex and color Ibid. of the child, the names and the places of birth of the parents, the occupation of the father, the residence of the parents, and the date of the record ;

In the record of marriages, the date of the marriage, the place of marriage, the name, residence, and official station of Marriages. Ibid. the person by whom married, the names and the places of birth of the parties, the residence of each, the age and color of each, the condition of each, (whether single or widowed,) the occupation, the names of the parents, and the date of the record ;

In the record of deaths, the date of the death, the name of Deaths. Ibid. the deceased, the sex, the color, the condition, (whether single, widowed, or married,) the age, the residence, the occupation, the place of death, the place of birth, the names and places of birth of the parents, the disease or cause of death, the place of burial, and the date of the record.

2. Parents shall give notice to the clerk of their city or town of the births and deaths of their children ; every householder shall give like notice of every birth and death happening in his house ; the eldest person next of kin shall give such notice of the death of his kindred ; the keeper of a workhouse, house of correction, prison, hospital, or almshouse, except the state almshouses at Tewksbury, Bridgewater, and Monson, and the master or other commanding officer of any ship shall give like notice of every birth and death happening among the persons under his charge. Whoever neglects to give such notice for the space of six months after a birth or death, shall forfeit a sum not exceeding five dollars. Parents and others to give notice of births and deaths. Ibid. § 2.

3. Any physician having attended a person during his last Physician to

certify, &c.  
Penalty.  
G. S. 21, § 3.

illness, shall, when requested within fifteen days after the decease of such person, forthwith furnish for registration a certificate of the duration of the last sickness, the disease of which the person died, and the date of his decease, as nearly as he can state the same. If any physician refuses or neglects to make such certificate, he shall forfeit and pay the sum of ten dollars to the use of the town in which he resides.

Sextons and  
others to make  
returns to city  
and town  
clerks.  
Penalties,  
Ibid. § 4.

4. Every sexton, undertaker, or other person having charge of a burial-ground, or the superintendent of burials having charge of the obsequies or funeral rites preliminary to the interment of a human body, shall forthwith obtain and return to the clerk of the city or town in which the deceased resided or the death occurred, the facts required by this chapter to be recorded by said officer concerning the deceased, and the person making such return shall receive from his city or town the fee of ten cents therefor.

Clerk to give  
certificate.  
Ibid.

The clerk, upon recording such facts, shall forthwith give to the person making such return, a certificate that such return has been made, which certificate such person shall deliver to the person having charge of the interment, if other than himself, before the burial when practicable, otherwise within seven days thereafter. When a burial takes place and no certificate is delivered as aforesaid, the sexton, undertaker, or other person having charge of the interment, shall forthwith give notice thereof to the clerk, under penalty of twenty dollars.

To transmit  
copies to secre-  
tary of state.  
Ibid. § 5.

5. The clerk of each city and town shall annually on or before the first day of February, transmit to the secretary of the commonwealth, certified copies of the records of the births, marriages, and deaths which have occurred therein during the year ending on the last day of the preceding December.

Record of clerk,  
&c., to be evi-  
dence.  
Ibid. § 6.

6. The record of the town clerk relative to any birth, marriage, or death, shall be *prima facie* evidence, in legal proceedings, of the facts recorded. The certificate signed by the town clerk for the time being shall be admissible as evidence of any such record.

Fees of, &c.  
Penalty.  
Ibid. § 7.

7. The clerk shall receive from his city or town for obtaining, recording, indexing, and returning to the secretary of the

commonwealth, the facts in relation to a birth, twenty cents ; G. S. 21, § 7. a marriage, ten cents ; a death, twenty cents for each of the first twenty entries, and ten cents for each subsequent entry, as the same shall be certified by the secretary of the commonwealth ; but a city or town containing more than ten thousand inhabitants may limit the aggregate compensation allowed to their clerk. He shall forfeit a sum not less than twenty nor more than one hundred dollars for each refusal or neglect to perform any duty required of him by this chapter.

8. The superintendents of the state almshouses at Tewksbury, Bridgewater, and Monson shall obtain, record, and make return of the facts in relation to the births and deaths which occur in their respective institutions, in like manner as is required of town clerks. The clerks of said towns shall, in relation to the births and deaths of persons in said almshouses, be exempt from the duties otherwise required of them by this chapter.

Superintendents of state almshouses to record, return, &c., facts in relation to births &c.  
Ibid. § 8.

9. The secretary shall at the expense of the commonwealth prepare and furnish to the clerks of the several cities and towns, and to the superintendents of the state almshouses, blank books of suitable quality and size to be used as books of record under this chapter, blank books for indexes thereto, and blank forms for returns, on paper of uniform size ; and shall accompany the same with such instructions and explanations as may be necessary and useful. City and town clerks shall make such distribution of blank forms of returns furnished by the secretary as he shall direct.

Secretary to furnish blank books and forms for returns.  
Ibid. § 9.

10. The secretary shall cause the returns received by him for each year to be bound together in one or more volumes with indexes thereto. He shall prepare from the returns such tabular results as will render them of practical utility, make report thereof annually to the legislature, and do all other acts necessary to carry into effect the provisions of this chapter.

To cause returns to be bound, &c.  
To report to legislature, &c.  
Ibid. § 10.

11. Any city or town containing more than ten thousand inhabitants, may choose a person other than the clerk to be registrar, who shall be sworn, and to whom all the provisions of this chapter concerning clerks shall apply. The returns and notices required to be made and given to clerks shall be made and given to such registrar under like penalties.

Registrars may be chosen in certain cases.  
Ibid. § 11.

Secretary to  
prosecute for  
penalty.  
G. S. 21, § 12.

12. The secretary of this commonwealth shall prosecute, by an action of tort, in the name of the commonwealth, for the recovery of any penalty or forfeiture imposed in the preceding sections.

Towns may  
make additional  
rules, &c.  
Ibid. § 13.

13. Any city or town may make rules and regulations to enforce the provisions of this chapter, or to secure a more perfect registration of births, marriages, and deaths, therein.

#### ORDINANCE.<sup>1</sup>

City registrar  
to be elected.  
Sept. 9, 1850.  
June 14, 1862.

SECTION 1. There shall be elected annually on the first Monday of February, or within sixty days thereafter, and whenever a vacancy occurs, by concurrent vote of the two branches of the city council, a city registrar, who shall hold his office one year from the first Monday of April in the year in which he shall be elected, and until a successor is elected, or he is removed. He shall be removable at the pleasure of the city council, and a vacancy may be filled at any time for the unexpired term.

Tenure of of-  
fice; vacancy.  
Sept. 9, 1850.  
June 14, 1862.

SECT. 2. The said city registrar shall perform the duties required by law to be performed by town and city clerks, or town and city registrars, in relation to births, marriages, and deaths; and he shall have the custody of all records, books, and papers belonging to the city, relating to these matters.

To perform du-  
ties of clerks  
and registrars  
in relation to  
births, mar-  
riages, and  
deaths.  
Sept. 9, 1850.

To report to  
city council.  
Ibid.

SECT. 3. The said city registrar shall, in the month of January, annually, report to the city council a statement of the number of births, of intentions of marriage entered according to law, of marriages solemnized, and of deaths recorded during the previous year, with such other information, and suggestions in relation thereto, as he may deem useful; and he shall perform such other duties as may be required of him by the mayor, the board of aldermen, or the city council.

Assistant reg-  
istrars.  
Ibid.

SECT. 4. The said city registrar is authorized to employ one or more assistants, to act under his authority and direction,

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<sup>1</sup> An ordinance providing for the appointment of a city registrar, passed September 9, 1850.

in obtaining information concerning all matters which may Sept. 9, 1850.  
legally come under his superintendence.

SECT. 5. The said city registrar shall receive, in full com- Compensation  
pensation for all his services under the general laws and the of registrar.  
ordinances of the city, such salary, and such additional allowance Ibid.  
for necessary clerk hire and assistants, as the city council may  
from time to time determine.

SECT. 6. The compensation required by law to be paid for Compensation  
obtaining and returning to the city registrar the information of undertakers.  
required concerning persons deceased, shall be understood as Ibid.  
included in the fees provided to be paid to undertakers, in the See *ante*, p. 312,  
twenty-fourth section of the ordinance relating to the public § 24.  
health.<sup>1</sup>

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## REWARDS.<sup>2</sup>

### STATUTES.

1. Mayor and aldermen may offer rewards, &c.
2. Payment of rewards, &c.

### STATUTES.

1. The mayor and aldermen or selectmen of any city or Mayor and al-  
town, when in their opinion the public good requires it, may dermen &c.,  
offer a suitable reward, to be paid by such city or town, not may offer re-  
wards &c.

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<sup>1</sup> See *Health*, ante, p. 312, § 24.

<sup>2</sup> The mayor and aldermen of the city of Boston passed an order "that a reward of five hundred dollars be offered to any person who shall give information, so that any person shall be convicted of setting fire to any building, for the purpose of burning the same." An advertisement was inserted in the city newspapers which were published on the next morning after said order was passed, reciting that sundry houses and other buildings had been recently set on fire, and offering a reward of five hundred dollars to any person "who shall give information, so that any perpetrator of these outrages shall be convicted." This advertisement purported to be "by order of the mayor and aldermen," and was signed by the city clerk. *Held*, that the advertisement must be taken to be the official act of the mayor and aldermen. *Held*, also, that the order and the advertisement were to be construed together, as parts of the same transaction, and that by the true construction thereof the reward

G. S. 170, § 7.  
 5 Met. 56.  
 7 Met. 409.  
 5 Cush. 219.  
 7 Gray, 274.  
 7 Gray, 374.

exceeding five hundred dollars in one case, to any person who in consequence of such offer secures any person charged with a capital crime or other high crime or misdemeanor committed in such place; and such reward shall be paid by the treasurer, upon the warrant of the mayor and aldermen or selectmen.

Payment of  
 reward.  
 G. S. 70, § 8.

2. When more than one claimant appears, and applies for the payment of such reward, the mayor and aldermen or selectmen shall determine to whom the same shall be paid; and if to more than one person, in what proportion to each; and their determination shall be final and conclusive.

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## RIOTS.

### STATUTES.

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| <ol style="list-style-type: none"> <li>1. Unlawful assemblies, how suppressed.</li> <li>2. Refusing assistance, when required, or to disperse, when commanded.</li> <li>3. Neglect of mayor or other officer to suppress, &amp;c.</li> <li>4. Officers may quell unlawful assemblies, by force, &amp;c.</li> <li>5. Armed force, if called out, to obey orders of governor, judge, &amp;c.</li> <li>6. Officers, &amp;c., to be held guiltless,</li> </ol> | <ol style="list-style-type: none"> <li>7. Riotously destroying dwelling-house, how punished, &amp;c.</li> <li>8. Towns, &amp;c., to pay three fourths of value of property destroyed or injured.</li> <li>9. May recover from offenders.</li> <li>10. Troops, how ordered out in case of riot, &amp;c. Form of requisition.</li> <li>11. Penalties for disobedience, &amp;c.</li> <li>12. Troops to appear armed, &amp;c.</li> </ol> |
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### STATUTES.

Unlawful as-  
 semblies, how  
 suppressed.  
 G. S. 164, § 1.  
 10 Mass. 518.

1. If any persons, to the number of twelve or more, being armed with clubs or other dangerous weapons, or if any persons, to the number of thirty or more, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any city

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was offered for information that would lead to the conviction of offences previously committed, and not offences thereafter committed. *Freeman v. City of Boston*, 5 Met. 56. The mayor of the city of Boston caused an advertisement to be published for about a week, in the daily papers of the city, stating that there had been a frequent and successful repetition of incendiary attempts, and offering a reward, to be paid by the city, for the apprehension and conviction of any person engaged in those attempts. *Held*, that this was not

or town, it shall be the duty of the mayor and of each of the aldermen of such city, and of each of the selectmen of such town, and of every justice of the peace living in any such city or town, and also of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the commonwealth to command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers to command the assistance of all persons there present, in seizing, arresting, and securing such persons in custody, so that they may be proceeded with for their offence, according to law. G. S. 164, § 1.

2. If any person present, being commanded by any of the magistrates or officers mentioned in the preceding section to aid or assist in seizing and securing such rioters, or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such magistrate or officer to depart from the place, refuses or neglects so to do, he shall be deemed one of the rioters, or persons unlawfully assembled, and may be prosecuted and punished accordingly. Refusing assistance when required, or to disperse when commanded. Ibid. § 2.

3. If any mayor, alderman, selectman, justice of the peace, sheriff, or deputy-sheriff, having notice of any such riotous or tumultuous and unlawful assembly, in the city or town in which he lives, neglects or refuses immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or omits or neglects to exercise the authority with which he is invested by chapter one hundred and thirty-four of the General Statutes, for suppressing such assembly, and for arresting and securing the offenders, he shall be punished by fine not exceeding three hundred dollars. Neglect of mayor or other officer to suppress riots, &c. Ibid. § 3.

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to be regarded as an unlimited offer, continuing till it should be formally withdrawn, but as limited to a reasonable time; and that it ceased to be an offer after the lapse of three years and eight months. *Loring v. City of Boston*, 7 Met. 409.

As to the right of city officers to claim rewards offered by the city authorities, see *Poole v. City of Boston*, 5 Cush. 219.

Officers may  
quell unlawful  
assemblies by  
force, &c.  
G. S. 164, § 4.

4. If any persons who are so riotously or unlawfully assembled, and who have been commanded to disperse, as before provided, refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned may require the aid of a sufficient number of persons, in arms or otherwise as may be necessary, and shall proceed in such manner as in their judgment is expedient, forthwith to disperse and suppress such assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Armed force, if  
called out, to  
obey orders of  
governor,  
judge, &c.  
G. S. 164, § 5.  
See G. S. c. 13,  
§ 134; c. 144,  
§§ 64, 65.

5. When any armed force called out in the manner provided by chapter thirteen of the General Statutes, to suppress a tumult or riot, or to disperse any body of men acting together by force and with intent to commit a felony, or to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this state, arrives at the place of such unlawful, riotous, or tumultuous assembly, they shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all persons who are committing any of said offences, as they have received from the governor, or any judge of a court of record, or the sheriff of the county, and also such orders as they there receive from any two of the magistrates or officers before mentioned.

Officers, &c., to  
be held guilt-  
less, though  
death is caused.  
Rioters, &c.,  
responsible.  
G. S. 164, § 6.

6. If, by reason of the efforts made by any two or more of said magistrates or officers, or by their direction, to disperse such assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person or other person then present, is killed or wounded, the magistrates and officers, and all persons acting by their order, or under their directions, and all persons acting under the two preceding sections, shall be held guiltless and fully justified in law; and if any of said magistrates or officers, or any person acting under or by the direction of any of the officers before mentioned, is killed or wounded, all persons so assembled and all other persons who, when commanded or required, refused to aid and assist said magistrates or officers, shall be held answerable therefor.

7. If any of the persons so unlawfully assembled demolishes, pulls down, or destroys, or begins to demolish, pull down, or destroy any dwelling-house, or other building, or ship or vessel, he shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years, and shall also be answerable to any person injured, to the full amount of the damage, in an action of tort.

Riotously destroying dwelling-house, how punished, &c. G. S. 164, § 7.

8. When property of the value of fifty dollars or more is destroyed, or property is injured to that amount, by any persons to the number of twelve or more, riotously, routously, or tumultuously assembled, the city or town within which the property was situated shall be liable to indemnify the owner thereof, to the amount of three fourths of the value of the property destroyed, or of the amount of such injury thereto, to be recovered in an action of tort; *provided*, that the owner of such property uses all reasonable diligence to prevent its destruction or injury, and to procure the conviction of the offenders.

Towns, &c., to pay three fourths of value of property destroyed or injured. Ibid. § 8.

9. A city or town which pays any sum under the provisions of the preceding section may recover the same against any or all of the persons who destroyed or injured such property.

May recover from offenders. Ibid. § 9.

10. When there is in any county a tumult, riot, mob, or a body of men acting together by force with intent to commit a felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the commonwealth, or when such tumult, riot, or mob is threatened, and the fact is made to appear to the commander-in-chief or the mayor of a city or to a court of record sitting in said county, or, if no such court is sitting therein, then to a justice of such court, or, if no such justice is within the county, then to the sheriff thereof, the commander-in-chief may issue his order, or such mayor, court, justice, or sheriff may issue a precept, directed to any commander of a division, brigade, regiment, battalion, or corps, directing him to order his command, or a part thereof, (describing the kind and number of troops,) to appear at a time and place therein specified, to aid the civil authority in suppressing such violence, and supporting the laws; which precept, if issued by a court, shall be in substance as follows:—

Troops, how ordered out in case of riot, &c. G. S. 13, § 134. 5 Gray, 121.

Form of requisition, &c.  
G. S. 13, § 134.

— ss.

COMMONWEALTH OF MASSACHUSETTS.

L. S.

To (*Insert the officer's title.*) A B, commanding (*Insert his command.*)

Whereas it has been made to appear to our justices of our , now holden at , within and for the county of , that (*Here state one or more of the causes above mentioned*) in our county of , and that military force is necessary to aid the civil authority in suppressing the same; now, therefore, we command you that you cause (*Here state the number and kind of troops required*), armed, equipped, and with ammunition, as the law directs, and with proper officers, either attached to the troops or detailed by you, to parade at , on , then and there to obey such orders as may be given them, according to law. Hereof fail not, at your peril; and have you there this writ, with your doings returned thereon.

Witness, L. S., Esq., at , on the day of , in the year C. D., Clerk.

And if the same is issued by a mayor, justice, or sheriff, it shall be under his hand and seal, and otherwise varied to suit the circumstances of the case.

Penalties for disobedience, &c.  
Ibid. § 135.

11. The officer to whom the order of the commander-in-chief or such precept is directed, shall forthwith order the troops therein mentioned to parade at the time and place appointed. If he refuses or neglects to obey such order or precept, or if an officer neglects or refuses to obey an order issued in pursuance thereof, he shall be cashiered and punished by fine or imprisonment not exceeding six months, as a court martial may adjudge. And a non-commissioned officer or soldier neglecting or refusing to appear at the place of parade to obey an order issued in such case, or any person advising or endeavoring to persuade an officer or soldier to refuse or neglect to appear at such place, or to obey such order, shall forfeit fifty dollars.

Troops to appear armed, &c.  
Ibid. § 136.

12. Such troops shall appear at the time and place appointed, armed and equipped, and with ammunition as for inspection of arms, and shall obey and execute such orders as they may then and there receive according to law.

## SCHOOLS.

## STATUTES.

## PUBLIC SCHOOLS.

1. Each town to have a school six months in a year. Branches to be taught.
2. High school in towns of five hundred families. What branches to be taught. Duration of school. Towns of four thousand inhabitants.
3. Schools may be maintained for those over fifteen years of age.
4. Schools to be under superintendence of school committee.
5. Female assistants to be employed.
6. Duty of ministers and town officers.
7. Towns to raise money for schools.
8. Funds of corporations for supporting schools not affected, &c.
9. Forfeiture for neglect to raise money, &c.
10. Three fourths of forfeiture to be appropriated to schools.
11. Vacancies in school committee, how filled.
12. When whole committee decline, new committee, how elected.
13. Term of service of person filling vacancy.
14. Committee shall appoint a secretary and keep records.
15. Instructor to receive and file certificate. When and how paid.
16. May be dismissed. Compensation to cease.
17. Examinations and visits by committee.
18. Bible to be read in schools. Sec-tarian books excluded.
19. Committee to direct what books to be used. Change of books, how made, &c.
20. To procure books, apparatus, &c.
21. For certain scholars at expense of town.

22. Expense of books so supplied to be taxed to parents, &c.
23. If parents unable to pay, tax may be omitted.
24. Duty of committee where school is for benefit of whole town.
25. Superintendent of schools, appointment, duties, &c.

## SCHOOL-HOUSES.

26. Towns not districted to maintain school-houses, &c.
27. Land may be taken for school-house lots, &c.
28. Owner of land may have jury. Proceedings; damages and costs.
29. Committee of town not districted to have charge of school-houses.
30. Provisions of chapter to apply to cities, except, &c.

## SCHOOL REGISTERS AND RETURNS.

31. Town clerks to deliver registers, &c., to school committee.
32. If not received.
33. Duties of assessors as to persons between five and fifteen.
34. Of school committee. Form of certificate.
35. Registers to be kept. Returns.
36. Committees' reports; to whom sent; where deposited; to be printed.
37. When report is not made.
38. When informal, &c.
39. Penalty for neglect, or informal, &c., report.
40. Reports, &c., of board of education, how received, delivered, and for what purpose. In whom property of.
41. Who to sign reports.
42. Penalty on committee for neglect in returns, &c.

43. Registers, how kept. Teachers not to draw pay until return of register.

ATTENDANCE OF CHILDREN IN THE SCHOOLS.

44. Children to be sent to school by parents, &c. Penalty for neglect. Excuses for neglect.  
 45. Truant officers and school committee to inquire and report.  
 46. All children may attend where they reside.  
 47. School committee to regulate admission, &c., to high school.  
 48. Children may attend in adjoining town and committee pay for instruction.  
 49. Wards may attend where guardian resides.  
 50. Children may attend in other towns than place of residence, and parents pay, &c.  
 51. Children not to attend unless vaccinated.  
 52. Race, &c., not to exclude.  
 53. Teachers and school committee to state grounds of exclusion.  
 54. Damages for exclusion, how recovered.  
 55. Interrogatories to committee, &c.

THE EMPLOYMENT OF CHILDREN AND REGULATIONS RESPECTING THEM.

56. Children under fifteen, who have not attended school, &c., not to be employed in manufactory, unless, &c.  
 57. Penalty; school committee to prosecute.  
 58. Children under twelve not to be employed more than ten hours a day. Penalty.  
 59. Cities and towns may make by-laws respecting habitual truants, &c. Fines.

60. Shall appoint persons to prosecute for violations of by-laws.  
 61. Minor convicted may be committed, &c.  
 62. On non-payment of fine may be committed. How discharged.  
 63. Warrants, where returnable. Compensation.

MASSACHUSETTS SCHOOL FUND.

64. School fund, how invested. Income only to be used.  
 65. Half the income to be distributed for support of common schools. Appropriations for other educational purposes to be paid from other half. Surplus to be added to principal.  
 66. Apportioned for schools by secretary and treasurer. When towns are not entitled to share.  
 67. Income received by towns to be applied for support of schools therein.

SCHOOL COMMITTEE OF BOSTON.

68. To consist of the mayor, &c.  
 69. Organization of school committee.  
 70. Powers and duties of the committee.

ORDINANCE.

1. School committee to elect and remove instructors, and determine their salaries, &c. May choose secretary, superintendent, &c.  
 2. To present estimate of the expenses of the public schools to auditor, &c.  
 3. To apportion salaries of instructors so as not to exceed the amount named in estimate.  
 4. To be judges of the wants of public schools, &c. To be consulted before any school-house is located or erected, &c.

## STATUTES.

1. In every town there shall be kept, for at least six months in each year, at the expense of said town, by a teacher or teachers of competent ability and good morals, a sufficient number of schools for the instruction of all the children who may legally attend public school therein, in orthography, reading, writing, English grammar, geography, arithmetic, the history of the United States, and good behavior. Algebra, vocal music, drawing, physiology, and hygiene shall be taught by lectures or otherwise, in all the public schools in which the school committee deem it expedient.

Each town to have school six months in a year.  
Branches taught.  
G. S. 38, § 1.

2. Every town may, and every town containing five hundred families or householders shall, besides the schools prescribed in the preceding section, maintain a school to be kept by a master of competent ability and good morals, who, in addition to the branches of learning before mentioned, shall give instruction in general history, book-keeping, surveying, geometry, natural philosophy, chemistry, botany, the civil polity of this commonwealth and of the United States, and the Latin language. Such last-mentioned school shall be kept for the benefit of all the inhabitants of the town, ten months at least, exclusive of vacations, in each year, and at such convenient place, or alternately at such places, in the town, as the legal voters at their annual meeting determine. And in every town containing four thousand inhabitants, the teacher or teachers of the schools required by this section, shall, in addition to the branches of instruction before required, be competent to give instruction in the Greek and French languages, astronomy, geology, rhetoric, logic, intellectual and moral science, and political economy.

High schools in towns of 500 families.  
Branches to be taught.  
Duration of school.  
Ibid. § 2.  
11 Mass. 141.  
11 Cush. 178.

3. Any town may establish and maintain, in addition to the schools required by law to be maintained therein, schools for the education of persons over fifteen years of age; may determine the term or terms of time in each year, and the hours of the day or evening during which said school shall be kept; and appropriate such sums of money as may be necessary for the support thereof.

Towns of 4,000 inhabitants.  
G. S. 38, § 2.

Schools may be maintained for those over fifteen years of age.  
G. S. 38, § 7.

School to be under superintendence of committee.  
G. S. 38, § 8.

4. When a school is so established, the school committee shall have the same superintendence over it as they have over other schools; and shall determine what branches of learning may be taught therein.

Female assistants to be employed.  
Ibid. § 9.

5. In every public school, having an average of fifty scholars, the school district or town, to which such school belongs, shall employ one or more female assistants, unless such district or town, at a meeting called for the purpose, votes to dispense with such assistant.

Duty of ministers and town officers.  
Ibid. § 11.

6. It shall be the duty of the resident ministers of the gospel, the selectmen, and the school committees, to exert their influence and use their best endeavors that the youth of their towns shall regularly attend the schools established for their instruction.

Towns to raise money for schools.  
Ibid. § 12.  
10 Met. 513.

7. The several towns shall, at their annual meetings, or at a regular meeting called for the purpose, raise such sums of money for the support of schools as they judge necessary; which sums shall be assessed and collected in like manner as other town taxes.

School funds of corporations not affected, &c.  
G. S. 38, § 13.

8. Nothing contained in this chapter shall affect the right of any corporation established in a town, to manage any estate or funds given or obtained for the purpose of supporting schools therein, or in any wise affect such estate or funds.

Forfeiture for neglect to raise money, &c.  
Ibid. § 14.

9. A town which refuses or neglects to raise money for the support of schools as required by this chapter, shall forfeit a sum equal to twice the highest sum ever before voted for the support of schools therein. A town which refuses or neglects to choose a school committee to superintend said schools, or to choose prudential committees in the several districts, when it is the duty of the town to choose such prudential committee, shall forfeit a sum not less than five hundred nor more than one thousand dollars, to be paid into the treasury of the county.

Three fourths of appropriated to schools.  
Ibid. § 15.

10. Three fourths of any forfeiture paid into the treasury of the county under the preceding section, shall be paid by the treasurer to the school committee, if any, otherwise to the selectmen of the town from which it is recovered, who shall apportion and appropriate the same to the support of the schools

of such town, in the same manner as if it had been regularly raised by the town for that purpose. G. S. 38, § 15.

11. If any person elected a member of the school committee, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if any member of the board declines further service, or, from change of residence or otherwise, becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of the town, or to the mayor and aldermen of the city, and the two boards shall thereupon, after giving public notice of at least one week, proceed to fill such vacancy; and a majority of the ballots of persons entitled to vote shall be necessary to an election.<sup>1</sup> Vacancies in school committee, how filled. Ibid. § 17.

12. If all the persons elected as members of the school committee, after such notice of their election, refuse or neglect to accept the office, or having accepted, afterwards decline further service, or become unable to attend to the duties of the board, the selectmen or the mayor and aldermen shall, after giving like public notice, proceed by ballot to elect a new board, and the votes of a majority of the entire board of selectmen, or of the mayor and aldermen, shall be necessary to an election. When whole committee decline, new committee, how elected. Ibid. § 18.

13. The term of service of every member elected in pursuance of the provisions of the two preceding sections, shall end with the municipal or official year in which he is chosen, and if the vacancy which he was elected to fill was for a longer period, it shall, at the first annual election after the occurrence of the vacancy, be filled in the manner prescribed for original elections of the school committee. Term of service of person filling vacancy. Ibid. § 19.

14. The school committee shall appoint a secretary and keep a permanent record book, in which all its votes, orders, and proceedings shall by him be recorded. Records of secretary. Ibid. § 22.

15. Every instructor of a town or district school shall, before he opens such school, obtain from the school committee Teachers to receive and file certificate.

<sup>1</sup> The manner of filling vacancies in the school committee of Boston, as provided for in § 25 of the Charter, (see *ante*, p. 11, § 25,) has been changed by the above provisions of the General Statutes.

When and how  
paid.  
G. S. 38, § 24.  
See *post.* §. 43.

a certificate in duplicate of his qualifications, one of which shall be deposited with the selectmen before any payment is made to such instructor on account of his services ; and upon so filing such certificate, the teacher of any public school shall be entitled to receive, on demand, his wages due at the expiration of any quarter, or term longer or shorter than a quarter, or upon the close of any single term of service, subject to the condition specified in section thirteen of chapter forty of the General Statutes.

May be dis-  
missed, &c.  
Ibid. § 25.

16. The school committee may dismiss from employment any teacher whenever they think proper, and such teacher shall receive no compensation for services rendered after such dismissal.

Examinations  
and visits by  
committee.  
Ibid. § 26.

17. The school committee, or some one or more of them, for the purpose of making a careful examination of the schools, and of ascertaining that the scholars are properly supplied with books, shall visit all the public schools in the town on some day during the first or second week after the opening of such schools respectively, and also on some day during the two weeks preceding the closing of the same ; and shall also for the same purposes visit, without giving previous notice thereof to the instructors, all the public schools in the town once a month, and they shall, at such examinations, inquire into the regulation and discipline of the schools, and the habits and proficiency of the scholars therein.

Bible to be read  
in schools.  
Sectarian books  
excluded.  
1862, 57.

18. The school committee shall require the daily reading of some portion of the Bible, without written note or oral comment, in the public schools, but they shall require no scholar to read from any particular version, whose parent or guardian shall declare that he has conscientious scruples against allowing him to read therefrom, nor shall they ever direct any school books calculated to favor the tenets of any particular sect of Christians, to be purchased or used in any of the public schools.

School books.  
Change of, how  
made, &c.  
G. S. 38, § 28.

19. The school committee shall direct what books shall be used in the public schools, and no change shall be made in said books except by the unanimous consent of the whole board, unless, the committee consists of more than nine, and questions relating to school books are entrusted to a sub-committee. In

that case, the consent of two thirds of the whole number of said sub-committee, with the concurrent vote of three fourths of the whole board, shall be requisite for such change. But in any city in which the school committee consists of more than eighteen persons, a change may be made in the school books used in the public schools in such city, by a majority of the whole committee, at a legal meeting of said committee. Notice of such intended change shall be given at a previous meeting thereof. If any change is made, each pupil then belonging to the public schools, and requiring the substituted book, shall be furnished with the same, by the school committee, at the expense of said town.

20. The school committee shall procure, at the expense of the city or town, a sufficient supply of text-books for the public schools, and give notice of the place where they may be obtained. Said books shall be furnished to the pupils at such prices as merely to reimburse the expense of the same. \* The school committee may also procure, at the expense of the city or town, such apparatus, books of reference, and other means of illustration as they deem necessary for the schools under their supervision, in accordance with appropriations therefor previously made.

Committee to procure text-books, apparatus, &c.  
G. S. 38, § 29.  
13 Pick. 229.

21. If any scholar is not furnished by his parent, master, or guardian, with the requisite books, he shall be supplied therewith by the school committee at the expense of the town.

For certain scholars at expense of town.  
G. S. 38, § 30.

22. The school committee shall give notice in writing to the assessors of the town of the names of the scholars supplied with books under the provisions of the preceding section, of the books so furnished, the prices thereof, and the names of the parents, masters, or guardians, who ought to have supplied the same. The assessors shall add the price of the books to the next annual tax of such parents, masters, or guardians; and the amount so added shall be levied, collected, and paid into the town treasury, in the same manner as the town taxes.

Expense of books so supplied to be taxed to parents, &c.  
Ibid. § 31.

23. If the assessors are of opinion that any parent, master, or guardian, is unable to pay the whole expense of the books so supplied on his account, they shall omit to add the price of

If parents unable to pay, tax may be omitted.  
Ibid. § 32.

G. S. 38, § 32. such books, or shall add only a part thereof, to his annual tax, according to their opinion of his ability to pay.

Duty of committee where school is for benefit of whole town.  
Ibid. § 33.

24. In any town containing five hundred families in which a school is kept for the benefit of all the inhabitants as before provided, the school committee shall perform the like duties in relation to such school, the house where it is kept, and the supply of all things necessary therefor, as the prudential committee may perform in a school district.

Superintendent of schools, appointment, duties, &c.  
Ibid. § 35.

25. Any town annually by legal vote, and any city by an ordinance of the city council, may require the school committee annually to appoint a superintendent of public schools, who, under the direction and control of said committee, shall have the care and supervision of the schools, with such salary as the city government or town may determine; and in every city in which such ordinance is in force, and in every town in which such superintendent is appointed, the school committee shall receive no compensation, unless otherwise provided by such city government or town.

#### SCHOOL-HOUSES.

Towns not districted to maintain school-houses, &c.  
Ibid. § 36.

26. Every town not divided into school districts shall provide and maintain a sufficient number of school-houses, properly furnished and conveniently located, for the accommodation of all the children therein entitled to attend the public schools; and the school committee, unless the town otherwise direct, shall keep them in good order, procuring a suitable place for the schools, where there is no school-house, and providing fuel and all other things necessary for the comfort of the scholars therein, at the expense of the town.

Land may be taken for school-house lots, &c.  
Ibid. § 38.  
2 Gray, 414.

27. When land has been designated by a town, school district, or those acting under its authority, or determined upon by the selectmen as a suitable place for the erection of a school-house and necessary buildings, or for enlarging a school-house lot, if the owner refuses to sell the same, or demands therefor a price deemed by the selectmen unreasonable, they may, with the approbation of the town, proceed to select, at their discretion, and lay out, a school-house lot, or an enlargement thereof,

and to appraise the damages to the owner of such land in the manner provided for laying out highways and appraising damages sustained thereby; and upon payment, or tender of payment, of the amount of such damages, to the owner, by the town, the land shall be taken, held, and used for the purpose aforesaid. But no lot so taken or enlarged, shall exceed in the whole, eighty square rods, exclusive of the land occupied by the school buildings.

28. When the owner feels aggrieved by the laying out or enlargement of such lot, or by the award of damages, he may, upon application therefor in writing to the county commissioners within one year thereafter, have the matter of his complaint tried by a jury, and the jury may change the location of such lot or enlargement, and assess damages therefor. The proceedings shall in all respects be conducted in the manner provided in cases of damages by laying out highways. If the damages are increased, or the location changed, by the jury, the damages and all charges shall be paid by the town; otherwise the charges arising on such application shall be paid by such applicant. The land so taken shall be held and used for no other purpose than that contemplated by this chapter,<sup>1</sup> and shall revert to the owner, his heirs, or assigns, upon the discontinuance there, for one year, of such school as is required by law to be kept by the town.

29. The school committee of a town in which the school district system has been abolished, or does not exist, shall have the general charge and superintendence of the school-houses in said town, so far as relates to the use to which the same may be appropriated.

30. Except as may be otherwise provided in their respective charters, or acts in amendment thereof, the provisions of chapter thirty-eight of the General Statutes so far as applicable, shall apply to cities. And the mayor and aldermen in the several cities are authorized to execute the powers given in section twenty-seven to the selectmen and town.

<sup>1</sup> Chapter thirty-eight of the General Statutes.

## REGISTERS AND RETURNS.

Town clerks to deliver registers, &c., to school committee.

G. S. 40, § 1.

31. The clerks of the several cities and towns, upon receiving from the secretary of the board of education the school registers and blank forms of inquiry for school returns, shall deliver them to the school committee of such cities and towns.

If not received.  
G. S. 40, § 2.

32. If a school committee fails to receive such blank forms of return on or before the last day of March, they shall forthwith notify the secretary of the board of education, who shall transmit such forms as soon as may be.

Duties of assessors as to persons between five and fifteen.

Ibid. § 3.

33. The assessors shall annually in the month of May, ascertain the number of persons in their respective towns and cities on the first day of May between the ages of five and fifteen years, and on or before the first day of July following report the same to the school committee.

Duties of school committee.

Form of certificate.

Ibid. § 4.

34. The school committee shall annually on or before the last day of the following April, certify under oath the numbers so returned to them by the assessors, and also the sum raised by such city or town for the support of schools during the preceding school year, including only wages and board of teachers, fuel for the schools, and care of the fires and school-rooms, and shall transmit such certificate to the secretary of the board of education. The form of such certificate shall be as follows, to wit:—

We, the school committee of \_\_\_\_\_, do certify, that from the returns made by the assessors in the year \_\_\_\_\_, it appears, that on the first day of May, in the year \_\_\_\_\_, there were belonging to said town the number of \_\_\_\_\_ persons between the ages of five and fifteen years; and we further certify, that said town raised the sum of \_\_\_\_\_ dollars for the support of public schools for the preceding school year, including only the wages and board of teachers, fuel for the schools, and care of fires and school-rooms.

} *School Committee.*

ss. On this \_\_\_\_\_ day of \_\_\_\_\_, personally appeared the above named school committee of \_\_\_\_\_, and made oath that the above certificate, by them subscribed, is true.

Before me,

*Justice of the Peace.*

35. The school committee shall cause the school registers to be faithfully kept in all the public schools, and shall annually on or before the last day of April, return the blank forms of inquiry, duly filled up, to the secretary of the board of education; and shall also specify in said returns the purposes to which the money received by their town or city from the income of the school fund has been appropriated.

Registers and  
returns.  
G. S. 40, § 5.  
See *post*, § 43.

36. The school committee shall annually make a detailed report of the condition of the several public schools, which report shall contain such statements and suggestions in relation to the schools as the committee deem necessary or proper to promote the interests thereof. The committee shall cause said report to be printed for the use of the inhabitants, in octavo, pamphlet form, of the size of the annual reports of the board of education, and transmit two copies thereof to the secretary of said board, on or before the last day of April, and deposit one copy in the office of the clerk of the city or town.

Committee's  
report; to  
whom sent;  
where depos-  
ited; to be  
printed.  
G. S. 40, § 6.

37. When a school committee fails within the prescribed time to make either the returns or report required of them by law, the secretary of the board of education shall forthwith notify such committee, or the clerk of the city or town, of such failure; and the committee or clerk shall immediately cause the same to be transmitted to the secretary.

When report is  
not made.  
Ibid. § 7.

38. If a report or return is found to be informal or incorrect, the secretary shall forthwith return the same, with a statement of all deficiencies therein, to the committee for its further action.

When informal,  
&c.  
Ibid. § 8.

39. The returns or reports of a city or town so returned by the secretary for correction, or which have not reached his office within the time prescribed by law, shall be received by him if returned during the month of May; but in all such cases ten per cent. shall be deducted from the income of the school fund which such city or town would have been otherwise entitled to. If such returns or reports fail to reach his office, before the first day of June, then the whole of such city or town's share of the income shall be retained by the treasurer of the commonwealth, and the amount so retained, as well as the ten per cent.

Penalty for  
neglect or in-  
formal, &c.,  
report.  
Ibid. § 9.

G. S. 40, § 9. when deducted, shall be added to the principal of the school fund. And such city or town shall in addition thereto forfeit not less than one hundred nor more than two hundred dollars; *provided, however*, if said returns and reports were duly mailed in season to reach said office within the time required by law, then the city or town from which said returns or reports are due shall be exempt from the forfeiture, otherwise incurred.

Reports, &c., of board of education, how received, delivered, and for what purpose. In whom property of. Ibid. § 10.

40. The clerk of each city and town shall deliver one copy of the reports of the board of education and its secretary to the secretary of the school committee of the city or town, to be by him preserved for the use of the committee, and transmitted to his successor in office; and two additional copies of said reports, for the use of said committee; and shall also deliver one copy of said reports to the clerk of each school district, to be by him deposited in the school district library, or, if there is no such library, carefully kept for the use of the prudential committee, teachers, and inhabitants, of the district, during his continuance in office, and then transmitted to his successor; and in case the city or town shall not be districted, said reports shall be delivered to the school committee, and so deposited by them as to be accessible to the several teachers and to the citizens; and such reports shall be deemed to be the property of the town or city, and not of any officer, teacher, or citizen, thereof.

Who to sign reports. Ibid. § 11.

41. When the school committee of a city or town is not less than thirteen in number, the chairman and secretary thereof may, in behalf of the committee, sign the annual school returns and the certificate required by sections thirty-four and thirty-five.

Penalty on committee for neglect in returns, &c. Ibid. § 12.

42. A city or town which has forfeited any part of its portion of the income of the school fund through the failure of the school committee to perform their duties in regard to the school report and school returns, may withhold the compensation of the committee.

Registers, how kept. Teachers not to draw pay until return of register. Ibid. § 13. See *ante*, § 35.

43. The several school teachers shall faithfully keep the registers furnished to them, and make due return thereof to the school committee, or such person as they may designate, and no teacher shall be entitled to receive payment for services until the register, properly filled up and completed, shall be so returned.

## ATTENDANCE OF CHILDREN IN THE SCHOOLS.

44. Every person having under his control a child between the ages of eight and fourteen years, shall annually during the continuance of his control send such child to some public school in the city or town in which he resides, at least twelve weeks, if the public schools of such city or town so long continue, six weeks of which time shall be consecutive; and for every neglect of such duty the party offending shall forfeit to the use of such city or town a sum not exceeding twenty dollars; but if it appears upon the inquiry of the truant officers or school committee of any city or town, or upon the trial of any prosecution, that the party so neglecting was not able, by reason of poverty, to send such child to school, or to furnish him with the means of education, or that such child has been otherwise furnished with the means of education for a like period of time, or has already acquired the branches of learning taught in the public schools, or that his bodily or mental condition has been such as to prevent his attendance at school or application to study for the period required, the penalty before mentioned shall not be incurred.

Children to be sent to school by parents, &c. Penalty for neglect. Excuses for neglect. G. S. 41, § 1.

45. The truant<sup>1</sup> officers and the school committees of the several cities and towns shall inquire into all cases of neglect of the duty prescribed in the preceding section; and ascertain from the persons neglecting, the reasons, if any therefor; and shall forthwith give notice of all violations, with the reasons, to the treasurer of the city or town; and if such treasurer wilfully neglects or refuses to prosecute any person liable to the penalty provided for in the preceding section, he shall forfeit the sum of twenty dollars.

Truant officers and school committee to inquire and report. Ibid. § 2.

46. All children within the commonwealth may attend the public schools in the place in which they have their legal residence, subject to the regulations prescribed by law.

Children to attend where they reside. Ibid. § 3.

47. The school committee shall determine the number and qualifications of the scholars to be admitted into the school kept for the use of the whole town.

Admission to high school, how regulated. Ibid. § 4.

<sup>1</sup> See powers and duties of truant officers, under the title *Truants*, post.

Children may attend in adjoining town, and committee pay for instruction.  
G. S. 41, § 5.

48. Children living remote from any public school in the town in which they reside, may be allowed to attend the public schools in an adjoining town, under such regulations, and on such terms, as the school committees of the said towns agree upon and prescribe; and the school committee of the town in which such children reside shall pay out of the appropriations of money raised in said town for the support of schools the sum agreed upon.

Wards, where may attend.  
Ibid. § 6.

49. Minors under guardianship, their father having deceased, may attend the public schools of the city or town of which their guardian is an inhabitant.

Children may attend in other towns than place of residence, and parents pay, &c.  
Ibid. § 7.

50. With the consent of school committees first obtained, children between the ages of five and fifteen years may attend school in cities and towns other than those in which their parents or guardians reside; but whenever a child resides in a city or town different from that of the residence of the parent or guardian, for the sole purpose of attending school there, the parent or guardian of such child shall be liable to pay to such city or town, for tuition, a sum equal to the average expense per scholar for such school for the period the child shall have so attended.

Children to be vaccinated.  
Ibid. § 8.

51. The school committee shall not allow any child to be admitted to or connected with the public schools, who has not been duly vaccinated.

Color, &c., not to exclude.  
Ibid. § 9.

52. No person shall be excluded from a public school on account of the race, color, or religious opinions of the applicant or scholar.<sup>1</sup>

Teachers, &c., to state grounds of exclusion.  
Ibid. § 10.

53. Every member of the school committee under whose directions a child is excluded from a public school, and every teacher of such school from which a child is excluded, shall, on application by the parent or guardian of such child, state in writing the grounds and reason of the exclusion.

Damages for exclusion.  
Ibid. § 11.

54. A child unlawfully excluded from any public school shall recover damages therefor in an action of tort, to be brought

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<sup>1</sup> The general school committee of the city of Boston have power, under the constitution and laws of this commonwealth, to make provision for the instruction of colored children, in separate schools established exclusively for them, and to prohibit their attendance upon the other schools. *Roberts v. The City of Boston*, 5 Cush. 198.

in the name of such child by his guardian or next friend against the city or town by which such school is supported. 8 Cush. 100.  
7 Gray, 245.

55. The plaintiff in such action may, by filing interrogatories for discovery, examine any member of the school committee, or any other officer of the defendant city or town, as if he were a party to the suit. Interrogatories to committee, &c.  
G. S. 41, § 12.

#### OF THE EMPLOYMENT OF CHILDREN, AND REGULATIONS RESPECTING THEM.

56. Children of the age of twelve years and under the age of fifteen years, who have resided in this state for the term of six months, shall not be employed in a manufacturing establishment unless within twelve months next preceding the term of such employment they have attended some public or private day school, under teachers approved by the school committee of the place in which said school was kept, at least one term of eleven weeks, and unless they shall attend such a school for a like period during each twelve months of such employment. Children under twelve years of age, having resided in this state for a like period, shall not be so employed unless they have attended a like school for the term of eighteen weeks within twelve months next preceding their employment, and a like term during each twelve months of such employment. Certain children not to be employed in manufactory, unless, &c.  
G. S. 42, § 1.

57. The owner, agent, or superintendent of a manufacturing establishment, who employs a child in violation of the provisions of the preceding section, shall forfeit a sum not exceeding fifty dollars for each offence, to be recovered by indictment, to the use of the public schools in the city or town where such establishment is situated; and the school committees in the several cities and towns shall prosecute for all such forfeitures. Penalty.  
School committee to prosecute.  
Ibid. § 2.

58. No child under the age of twelve years shall be employed in any manufacturing establishment more than ten hours in one day; and the owner, agent, or superintendent, who knowingly employs such child for a greater number of hours, shall forfeit the sum of fifty dollars for each offence, to the use of the person prosecuting therefor. Children under twelve not to be employed more than ten hours a day.  
Penalty.  
Ibid. § 3.  
9 Met. 562.

By-laws re-  
specting habit-  
ual truants, &c.  
Fines.  
G. S. 42, § 4.  
See 1862, 207, § 1.

59. Each city and town may make all needful provisions and arrangements concerning habitual truants, and children not attending school, or without any regular and lawful occupation, or growing up in ignorance, between the ages of five and sixteen years; and also all such by-laws respecting such children, as shall be deemed most conducive to their welfare and the good order of such city or town; and there shall be annexed to such by-laws suitable penalties, not exceeding twenty dollars for any one breach; *provided*, that said by-laws shall be approved by the superior court of the county.<sup>1</sup>

Violations of  
by-laws, how  
prosecuted.  
G. S. 42, § 5.

60. The several cities and towns availing themselves of the provisions of the preceding section, shall appoint at the annual meetings of such towns, or annually by the mayor and aldermen of such cities, three or more persons, who alone shall be authorized, in case of violation of such by-laws, to make the complaint and carry into execution the judgments thereon.<sup>1</sup>

Minor convicted  
may be com-  
mitted, &c.  
Ibid. § 6.  
See 1862, 207, § 2.

61. A minor convicted under such by-law of being an habitual truant, or of not attending school, or of being without regular and lawful occupation, or growing up in ignorance, may, at the discretion of the justice or court having jurisdiction of the case, instead of the fine mentioned in section fifty-nine, be committed to any such institution of instruction, house of reformation, or suitable situation provided for the purpose under authority of section fifty-nine, for such time, not exceeding two years, as such justice or court may determine.<sup>1</sup>

On non-pay-  
ment of fine,  
may be commit-  
ted.  
How dis-  
charged.  
G. S. 42, § 7.  
See G. S. c. 180.

62. A minor convicted of either of said offences, and sentenced to pay a fine, may, in default of payment thereof, be committed to such institution of instruction, house of reformation, or suitable situation provided as aforesaid. And upon proof that the minor is unable to pay the fine, and has no parent, guardian, or person chargeable with his support, able to pay the same, he may be discharged by such justice or court whenever it is deemed expedient, or he may be discharged in the manner poor convicts may be discharged from imprisonment for non-payment of fine and costs.<sup>1</sup>

<sup>1</sup> See *Truants*, post.

63. Warrants issued under the provisions of the five preceding sections shall be returnable before any trial justice or judge of a police court, at the place named in the warrant; and the justice or judge shall receive such compensation as the city or town determines.

Warrants,  
where return-  
able.  
Compensation.  
G. S. 42, § 8.

## MASSACHUSETTS SCHOOL FUND.

64. The present school fund of this commonwealth, together with such additions as may be made thereto, shall constitute a permanent fund, to be invested by the treasurer with the approbation of the governor and council, and called the "Massachusetts School Fund;" the principal of which shall not be diminished, and the income of which, including the interest on notes and bonds taken for sales of Maine lands and belonging to said fund, shall be appropriated as hereinafter provided.

School fund,  
how invested.  
Income only to  
be used.  
G. S. 36, § 1.

65. One half of the annual income of said fund shall be apportioned and distributed for the support of public schools without a specific appropriation. All money appropriated for other educational purposes, unless otherwise provided by the act appropriating the same, shall be paid from the other half of said income so long as it shall be sufficient for that purpose. If insufficient, the excess of such appropriations in any year shall be paid from any money in the treasury not otherwise appropriated. If the income in any year exceeds such appropriations for the year, the surplus shall be added to the principal of said fund.

Income, how  
distributed.  
Ibid. § 2.

66. The income of the school fund appropriated by the preceding section to the support of public schools, which may have accrued upon the first day of June of each year, shall be apportioned by the secretary and treasurer, and on the tenth day of July be paid over by the treasurer to the treasurers of the several towns and cities for the use of the public schools, according to the number of persons therein between the ages of five and fifteen years, ascertained and certified as provided in sections thirty-three and thirty-four. But no such apportionment shall be made to a town or city which has not complied with

How appor-  
tioned for  
schools.  
When towns  
are not entitled  
to share.  
Ibid. § 3.

G. S. 36, § 3. the provisions of sections thirty-five and thirty-six of said chapter, or which has not raised by taxation for the support of schools during the school year embraced in the last annual returns, including only wages and board of teachers, fuel for the schools, and care of fires and school-rooms, a sum not less than one dollar and fifty cents for each person between the ages of five and fifteen years belonging to said town or city on the first day of May of said school year.

Income received by towns, how applied. Ibid. § 4. 67. The income of the school fund received by the several cities and towns shall be applied by the school committees thereof to the support of the public schools therein, but said committees may, if they see fit, appropriate therefrom any sum, not exceeding twenty-five per cent. of the same, to the purchase of books of reference, maps, and apparatus for the use of said schools.

#### SCHOOL COMMITTEE OF BOSTON.

School committee of Boston. Charter, p. 22, ante, §§ 53, 54, 55. 68. The school committee of the city of Boston shall consist of the mayor of the city, the president of the common council, and of seventy-two other persons, six of whom shall be chosen in each ward, and who shall be inhabitants of the wards in which they are chosen; two of said members to be chosen by the inhabitants of the several wards at their annual election of municipal officers, who shall hold their office for three years from the second Monday in January, next ensuing after their election.

Organization of school committee. Ibid. p. 22, § 55. 69. The persons so chosen, as members of the school committee, shall meet and organize on the second Monday of January, at such hour as the mayor may appoint. They may choose a secretary and such subordinate officers as they may deem expedient, and shall define their duties, and fix their respective salaries.

Powers and duties of school committee. Ibid. p. 23, § 56. 70. The said committee shall have the care and management of the public schools, and may elect all such instructors as they may deem proper, and remove the same whenever they consider it expedient. And generally they shall have all the

powers, in relation to the care and management of the public schools, which the selectmen of towns or school committees are authorized by the laws of this commonwealth to exercise.

Charter, ante,  
p. 23, § 56.

ORDINANCE.<sup>1</sup>

SECTION 1. The school committee are authorized to elect and contract with all such instructors as they may deem proper for the public schools, and to determine the amount of their respective salaries; they are also authorized to dismiss and remove any instructor from said schools, when they deem it proper and expedient, and generally, they shall have all the powers in relation to the care and management of the public schools, which the selectmen of towns or school committees are authorized by the laws of the commonwealth to exercise; they may choose a secretary, superintendent, and such subordinate officers as they may deem expedient, and shall define their duties, and fix their respective salaries.

School committee to elect and remove instructors, and determine their salaries, &c.  
Dec. 18, 1855.

May choose secretary, superintendent, &c.  
Ibid.

SECT. 2. The school committee shall present to the auditor on or before the first day of February in each year, an estimate in writing of the expenses of the public schools for the next financial year, stating the amount required for salaries, for incidental expenses, and for the alteration, repairs, and erection of school-houses.

School committee to present estimate of expenses of the public schools to auditor, &c.  
Ibid.

SECT. 3. Said committee shall not fix the salaries of the teachers in the public schools at such rates that the aggregate amount of all said salaries shall, in any financial year, exceed the sum named for that purpose in their estimate.

To apportion salaries of instructors.  
Ibid.

SECT. 4. The said committee shall be the original judges of the expediency and necessity of having additional or improved accommodations for any public school within the limits of the city; and whenever, in their opinion, a school-house is required, or material alterations needed, they shall send a communication to the city council, stating the locality and the nature of the further provisions for schools which are wanted; and no school-

To be judges of the wants of the public schools, &c.  
Ibid.

<sup>1</sup> An ordinance relating to public schools, passed December 18, 1855.

To be consulted before any school-house is located or erected, &c.  
Dec. 18, 1855.

house shall be located, erected, or materially altered, until the school committee shall have been consulted on the proposed locality and plans, except by order of the city council.

SECOND-HAND ARTICLES.

STATUTES.

- 1. Cities, &c., may make ordinances regulating the purchase and sale of second-hand articles, old junk, metals, &c.
- 2. Conditions of the traffic in second-hand articles to be incorporated in license.
- 3. Penalty for violation of ordinance, by-laws, &c.

ORDINANCE.

- 1. No person shall deal in second-hand articles, junk, &c., without license.
- 2. Dealers shall keep a record of purchases, &c., open to inspection.

- 3. No purchase to be made of minors or apprentices, and no sale within one week, except, &c.
- 4. Keeper of shop to have a sign, &c.
- 5. All articles to be open to examination of aldermen, &c.
- 6. Time when shop may be kept open.
- 7. License to designate place of business.
- 8. Penalties.
- 9. Sellers of books and furniture exempt from provisions of the ordinance.
- 10. License to contain the provisions of the ordinance.

STATUTES.

Cities, &c., may make ordinances regulating the purchase and sale of second-hand articles.  
1862, 205, § 1.

- 1. Every city and town may provide by ordinance or by-law, that every keeper of a shop for the purchase, sale, or barter of junk, old metals, or second-hand articles within their respective limits, shall keep a book, in which shall be written at the time of every purchase of any such article, a description of the article or articles purchased, the name, age, and residence of the person from whom, and the day and hour when, such purchase was made; that such book shall at all times be open to the inspection of the mayor and aldermen of the city, or the selectmen of the town, in which such shop is located, and to any person by them respectively authorized to make such inspection; that every keeper of such shop shall put in some suitable and

conspicuous place on his shop, a sign, having his name and occupation legibly inscribed thereon in large letters ; that such shops, and all articles of merchandise therein, may be examined by the mayor and aldermen of any city, or the selectmen of any town, or by any person by them respectively authorized to make such examination, at all times ; and that no keeper of such shop shall, directly or indirectly, either purchase, or receive by way of barter or exchange, any of the articles aforesaid, of any minor or apprentice, knowing or having reason to believe him to be such ; and that no article purchased or received shall be sold until a period of at least one week, from the date of its purchase or receipt, shall have elapsed. Every city and town may also prescribe in like manner the hours in which such shops shall be closed, and that no keeper thereof shall make purchase of any of the articles aforesaid during such hours.

2. Every rule, regulation, and restriction which shall be made by any city or town, in accordance with the provisions of this act, in regard to the keeping of, and traffic in, the articles aforesaid, shall be incorporated in every license granted in such city or town for dealing in the said articles.

3. Any person who shall violate either of the rules, regulations, or restrictions contained in his license, as aforesaid, shall forfeit a sum not exceeding twenty dollars for each offence.

#### ORDINANCE.<sup>1</sup>

SECTION 1. No person shall be a dealer in or keeper of a shop for the purchase, sale, or barter, of junk, old metals, or second-hand articles, in this city, unless he is duly licensed therefor by the board of aldermen.

SECT. 2. Every person dealing in said articles or keeping such a shop, shall keep a book, in which he shall record, at the time of every purchase by him of either of the articles mentioned in the preceding section, a description of the article so purchased, the name, age, and residence of the person from whom,

<sup>1</sup> An ordinance passed August 12, 1862, and amended December 6, 1862.

Aug. 12, 1862. and the day and hour when, he so received it; and that book shall at all times be open to the inspection of the mayor or either of the aldermen, or of any person by said board of aldermen authorized to make such examination.

No purchase to be made of minor, &c., and no sale within one week, except, &c. Ibid. Dec. 6, 1862. See § 9. SECT. 3. No keeper of such shop shall directly or indirectly, either purchase, or receive by way of barter or exchange, any of the articles aforesaid of any minor or apprentice, knowing or having reason to believe him to be such; and no article purchased by such shopkeeper shall be sold by him until a period of at least one week from its purchase or receipt by him shall have elapsed, without entering on his book the name and address of the purchaser, with other proofs sufficient to enable him to keep trace thereof.

Keeper of shop to have a sign, &c. Aug. 12, 1862. SECT. 4. Every keeper of such shop shall put in some suitable and conspicuous place on his shop a sign, having his name and occupation legibly inscribed thereon, in large letters.

All articles to be open to examination, &c. Ibid. SECT. 5. Every such shop, and all articles of merchandise therein, may be examined at any time by the mayor, or either of the aldermen, or by any person by the board of aldermen authorized to make such examination.

Time when shop may be kept open. Aug. 12, 1862. Dec. 6, 1862. SECT. 6. No keeper of such shop shall have the same open for the transaction of business, except during the time between the rising of the sun and nine o'clock in the afternoon each week-day except Saturday, when said shop may be kept open until ten o'clock in the evening.

License to designate place of business. Aug. 12, 1862. SECT. 7. All licenses granted under this ordinance shall designate the place where the person licensed may carry on his business; and he shall not engage in, or carry on, his business under his license in any other place than the one so designated.

Penalties. Ibid. SECT. 8. Any person offending against either of the provisions of this ordinance shall forfeit a sum not exceeding twenty dollars for each offence.

Sellers of books and furniture exempt. Ibid. SECT. 9. Persons who buy or sell no second-hand articles except books or furniture shall be exempt from the provisions and conditions of section three.

License to contain provisions of ordinance. Ibid. SECT. 10. All the provisions of this ordinance shall be incorporated into every license which shall be granted under it.

## SEWERS AND DRAINS.

## STATUTES.

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|---|--|
| <ol style="list-style-type: none"> <li>1. Board of aldermen may lay and repair sewers and drains.</li> <li>2. Land to be taken and damages appraised as in laying out highways.</li> <li>3. In towns which shall accept, &amp;c., main drains and sewers may be laid.</li> <li>4. Persons entering their drains into main drain to be assessed, &amp;c.</li> <li>5. Such assessments to constitute a lien. How collected.</li> <li>6. Party aggrieved may have jury. To file specification of objections.</li> <li>7. Town may provide that part of expense shall be paid by town, &amp;c. In Boston, not less than one quarter shall be so paid.</li> <li>8. Highways, streets, &amp;c., not to be dug up to lay drains, &amp;c., without consent of selectmen.</li> <li>9. Drains, &amp;c., how to be constructed.</li> <li>10. Persons benefited to share expense of making drains, repairing, &amp;c.</li> <li>11. To share expense of removing obstructions, &amp;c.</li> <li>12. Those refusing to pay their proportions, shall pay double the amount, &amp;c.</li> <li>13. Notice to be given before opening any drain.</li> <li>14. Provisions not to affect agreements of parties.</li> <li>15. Drainage in the Back Bay.</li> </ol> | <ol style="list-style-type: none"> <li>3. Common sewers to be laid near centre of street. Manner of construction. Size.</li> <li>4. Superintendent to ascertain and enter in a book the dimensions, &amp;c., of sewers to be built.</li> <li>5. To keep account of expense of each, and report to board of aldermen, &amp;c.</li> <li>6. Board of aldermen, in making assessments, to deduct not less than one quarter of the expense. Manner of assessment.</li> <li>7. Manner of entering, demanding, and collecting assessments.</li> <li>8. Same duties to be performed in relation to common sewers heretofore constructed.</li> <li>9. Board of aldermen may compel owners of land to make drains. May make same at owner's expense, in case they neglect.</li> <li>10. Rain-water from roofs may be carried into common sewers.</li> <li>11. Penalty for entering drain into common sewer without permit. Fee for permit.</li> <li>12. Drains entering common sewers, how to be built, &amp;c. License.</li> <li>13. Persons licensed, to execute a bond. Conditions.</li> <li>14. Penalty for constructing, &amp;c., drain without permission.</li> <li>15. Permission not to exempt from assessment.</li> <li>16. Drains to be cleansed, repaired, &amp;c. Penalty.</li> <li>17. Penalty for permitting obstruction to sewer or drain. Obstructions how removed and prevented.</li> <li>18. Repealing clause.</li> <li>19. Vaults may be connected with common sewers by permission of superintendent of sewers.</li> </ol> |
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## ORDINANCE.

1. Superintendent of common sewers to be chosen.
2. To have supervision of common sewers.

## STATUTES.

Board of aldermen in Boston may lay and repair sewers and drains.  
G. S. 48, § 1.

1. The board of aldermen of the city of Boston may lay, make, and maintain, in said city, all such main drains or common sewers as they shall adjudge to be necessary for the public convenience or the public health, and may repair the same from time to time whenever it is necessary.<sup>1</sup>

Land to be taken, and damages appraised as in laying out highways.  
Ibid. § 2.

2. When land is taken by virtue of the preceding section, the board shall proceed in the manner required by law in taking land for public highways or streets; and persons suffering damage in their property shall have the rights and remedies for the ascertainment and the recovery of the amount of such damage provided by law for the ascertainment and recovery of damages for lands taken in said city of Boston for public highways or streets.

In certain towns main drains and sewers may be laid.  
Ibid. § 3.  
9 Cush. 233.

3. In any city or town in which chapter one hundred and fifteen of the Statutes of eighteen hundred and forty-one has been accepted according to the provisions of that act, and in any city in which this and the three following sections have been accepted by the city council,<sup>2</sup> and in any town in which the same have been accepted by the legal voters at a meeting called for that purpose, the mayor and aldermen of the city and the selectmen of the town may lay, make, maintain, and repair all main drains or common sewers; and all the

<sup>1</sup> The city of Boston has the right to construct a sewer for the purpose of carrying off the drainage from high to low water mark, and it is not only the right, but the duty of the city to extend their sewers to low-water mark, for the purpose of removing a nuisance injurious to the health of the citizens. *City of Boston v. Leecraw*, 17 Howard (U. S.) 426.

By the old law of Massachusetts, a littoral proprietor of land owned down to low-water mark, subject to the condition that until he occupied the space between high and low water mark, the public had a right to use it for the purposes of navigation, and that the city of Boston had the same right as other littoral proprietors, and consequently had the control over a dock situated between two wharves, one end being at high, and the other at low water mark, and that the city had not dedicated the dock to public uses merely by abstaining from exercising a control over it. *Ibid.* The exclusive control of the construction of sewers in Boston is in the board of aldermen, and the city is not liable for injuries occasioned to private estates by their construction if according to the order of that board; but the city is liable for injuries caused by suffering them to be out of repair. *Child v. Boston*, 4 Allen, 41.

<sup>2</sup> Accepted by the city council, April 7, 1841.

main drains or common sewers shall be the property of such city or town. G. S. 48, § 3.

4. Every person who enters his particular drain into such main drain or common sewer, or who, by more remote means, receives benefit thereby, for draining his cellar or land, shall pay to the city or town a proportional part of the charge of making and repairing the same, to be ascertained, assessed, and certified by the mayor and aldermen or selectmen, and notice thereof shall be given to the party to be charged, or his tenant or lessee. Persons entering drains into main drain to be assessed, &c. G. S. 48, § 4.

5. Assessments so made shall constitute a lien on the real estates assessed for one year after they are laid, and may together with incidental costs and expenses, be levied by sale thereof if the assessment is not paid within three months after a written demand for payment, made either upon the person assessed or upon any person occupying the estate; such sale to be conducted in like manner as sales for the non-payment of taxes.<sup>1</sup> Such assessments to constitute a lien, and may, with costs and expenses, be collected by sale. Ibid. § 5.

6. A person aggrieved by such assessment may, at any time within three months from receiving notice thereof, apply for a jury. Such application shall be made in like manner and the proceedings thereon shall be the same as in case of lands taken for laying out of highways; *provided*, that before making his application the party shall give one month's notice in writing to the selectmen or mayor and aldermen of his intention so to apply, and shall therein particularly specify his objections to the assessment made by them; to which specification he shall be confined upon the hearing by the jury. Party aggrieved may have jury. Mode of proceeding. Ibid. § 6. See § 10.

7. Nothing herein contained shall prevent a city or town from providing, by ordinance or otherwise, that a part of the expense of constructing, maintaining, and repairing main drains or common sewers shall be paid by such city or town. And in the city of Boston, not less than one quarter part of such expense shall be paid by the city, and shall not be charged upon those using the main drains or common sewers. Part of expense may be paid by town, &c. G. S. 48, § 7. How in Boston. Ibid.

8. Whoever digs or breaks up the ground in a highway, Highways, &c.,

<sup>1</sup> See *Collection of Taxes*, post.

when may be  
dug up to lay  
drains, &c.  
G. S. 48, § 8.

street, or lane in any town, for the laying, altering, or repairing of a drain or common sewer, without the consent of the selectmen in writing, shall forfeit five dollars for each offence to the use of the town.

Drains, &c.,  
how to be con-  
structed.  
Ibid. § 9.

9. All drains and common sewers in a street or highway shall be substantially made or repaired with brick or stone, or with such other materials, and in such manner, as the selectmen of the town shall permit or direct.

Persons bene-  
fited to share  
expense of  
making drains,  
repairing, &c.  
Ibid. § 10.  
See § 13.

10. When a person, by the consent and under the direction of the selectmen, at his own charge, makes and lays a common sewer or main drain for the benefit of himself and others who think fit to join therein, every person who afterwards enters his particular drain into the same, or by any more remote means receives benefit thereby for the draining of his cellar or land, shall pay to the owners of such common sewer or main drain a proportional part of the charge of making and repairing the same, to be determined by the selectmen of the town and certified under their hands; saving always to the party aggrieved by any such determination the right to a trial by jury, as provided in section six.

Persons bene-  
fited by drains  
to share ex-  
pense of remov-  
ing obstruc-  
tions, &c.  
G. S. 48, § 11.

11. When a common sewer or main drain is stopped or gone to decay, so that it is necessary to open the same in order to repair it or to remove such stoppage, all persons benefited by such repair or removal of obstructions, as well those who do not as those who do cause such repairs to be made or obstruction to be removed, shall pay to the person incurring the expense their proportional parts thereof, to be determined as provided in the preceding section.

Those refusing  
to pay their  
proportions,  
shall pay dou-  
ble amount, &c.  
Ibid. § 12.  
7 Cush. 277.  
9 Cush. 233.

12. Every person so required to pay his proportional part of the expense of making or repairing a drain or common sewer, shall have notice of the sum and of the person to whom the same is to be paid; and if he does not, within seven days after such notice, pay the same to the person authorized by the selectmen to receive it, he shall be held to pay double the amount certified by the selectmen as aforesaid, with all expenses arising upon such neglect; and the person so authorized by the selectmen may recover the same in an action of contract in his own name.

13. Whoever has occasion to open a common sewer or main drain in order to clear and repair the same, shall, seven days at least before he begins to open the same, give notice to all parties interested, by advertising in such manner as the selectmen may direct, that such parties may, if they think proper, object thereto and state their objections in person or in writing to the selectmen; and if the selectmen judge the objections reasonable, the parties making the same shall not be held to pay any part of such expenses; but if they do not make their objections to the selectmen within three days after such notice, or if the objections are not adjudged reasonable, the selectmen shall in writing under their hands give liberty to the persons applying, to open such common sewer or main drain, and to clear and repair the same; and all persons interested therein shall pay their proportions to be determined as provided in section ten.

Notice to be given before opening any drain.  
G. S. 48, § 13.  
See *ante*, § 10.

14. Nothing contained in this chapter shall affect any covenants or agreements among the proprietors of such drains or common sewers.

Agreements of owners not affected.  
*Ibid.* § 14.

15. By the resolve of April thirty, eighteen hundred and sixty-two, the commissioners on public lands are "authorized to make such modifications of existing agreements, in relation to the drainage of the Back Bay Territory, so called, situated between the Milldam and Tremont Street in Boston, as may be agreed upon by the city of Boston and all other parties to such agreements, subject to the approval of the governor and council."<sup>1</sup>

Drainage in the Back Bay.  
Res. 1862, c. 96.

<sup>1</sup> The existing agreements referred to are the tripartite agreement, so called, between the State, City and Boston Water Power Company, of December 11, 1856, which provides for draining the whole of the lands of the Commonwealth, and the Boston Water Power Company into Charles River, by means of a large sewer of nine feet diameter at the outlet, crossing the railroads and running longitudinally through the Water Power Company's land, and terminating in a sewer of smaller dimensions at Camden Street. By the contract the State is to build that part of the large sewer within its own lands and twelve hundred feet beyond them, to a point on the Water Power Company's territory, from which point the Water Power Company is to carry it through Columbus Avenue to Camden Street; and the City is to build a branch from Columbus Avenue to Tremont Street through Dedham Street. No part of this sewer has been constructed. It is now proposed to alter the plan, and

ORDINANCE.<sup>1</sup>

Superintendent  
of common sew-  
ers to be  
chosen.  
June 14, 1844.

SECTION 1. There shall be chosen annually, on the first Monday of February or within sixty days thereafter, by concurrent vote of the city council, a superintendent of common sewers, who shall hold his office for one year from the first day of April, of the year in which he shall be elected, or until removed, or a successor be appointed, who shall receive such compensation as the city council shall determine, and who shall be removable at the pleasure of the city council; and in case said office shall at any time become vacant, the same shall be filled in the manner above prescribed for the unexpired term.

To have super-  
vision of com-  
mon sewers.  
Ibid.

SECT. 2. The superintendent shall, under the direction of the board of aldermen, take the general supervision of all common sewers, which now are, or hereafter may be built and owned by the city, or which may be permitted to be built or opened by its authority, and he shall take charge of the building and repairs of the same, and make all contracts for the supply of labor and materials therefor.

Common sew-  
ers to be laid  
near centre of  
street.  
Manner of con-  
struction.  
Ibid.

SECT. 3. All common sewers which shall be considered necessary by the board of aldermen, in any street or highway, shall be laid as nearly as possible in the centre of such street or highway, and shall be built of such materials, and of such dimensions, as the said board shall direct. And where it is practicable and advisable, they shall be of a sufficient size to be entered and cleaned without disturbing the pavement above.

Size.

Superintendent  
to ascertain and  
enter in a book  
the dimensions,

SECT. 4. The superintendent, whenever any common sewer is ordered to be built or repaired, shall ascertain its depth, breadth, mode of construction and general direction, and take

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drain part of the territory by a sewer emptying into Charles River, and the rest of it by a sewer emptying into the South Bay. See report of the joint special committee on the Back Bay streets, with reference to their direction, sewerage, and grade, dated August 24, 1863. City Docs. 1863, No. 81.

<sup>1</sup> An ordinance in relation to common sewers and drains, passed June 14, 1841; and ordinances in addition thereto, passed March 7, 1844; December 26, 1855; and December 31, 1862.

the plan<sup>1</sup> thereof, and insert the same, with all those particulars, in a book, to be kept for that purpose, and forthwith ascertain and insert on said plan all entries made into such sewer.

SECT. 5. He shall keep an accurate account of the expense of constructing and repairing each common sewer, and shall report the same to the board of aldermen, together with a list of the persons and estates deriving benefit therefrom, and an estimate of the value of the lands, upon which said expense ought to be assessed; the value of such lands to be estimated independently of any buildings or improvements thereon.

SECT. 6. It shall be the duty of the board of aldermen, in making assessments for defraying the expense of constructing or repairing common sewers, pursuant to the provisions of this ordinance, to deduct from the said expense such part, and not less than one quarter part, as they may deem expedient, to be charged to and paid by the city; and to assess the remainder thereof upon the persons and estates deriving benefit from such common sewer, either by the entry of their particular drains, therein, or by any more remote means; apportioning the assessment according to the value of the lands thus benefited, independently of any buildings or improvements thereon; and also to prescribe and establish the time when the proportion of the said assessments, which is charged upon persons benefited, shall be paid.

SECT. 7. The superintendent shall enter in books, to be kept for that purpose, all such assessments made by the board of aldermen, and shall forthwith make out bills for the same, and deliver them to the city treasurer for collection; and the said treasurer shall forthwith demand payment in writing, of

<sup>1</sup> In all plans made for the city in reference to the subject of grading streets, drainage, water works, &c., relative heights are expressed by figures, low water being at zero. The crossings of the Boston and Worcester and the Boston and Providence Railroads are nearly six feet above zero; Tremont Street is *sixteen* feet above; the coping of the Dry Dock at the Navy Yard, Charlestown, is *fifteen* feet above; and the grade of the Water Power and Commonwealth's land is *eighteen* feet above. Ordinary high water is at *ten*, but it is not very uncommon for spring tides moved by strong easterly winds to rise to *fourteen*.

June 14, 1841. the said bills, in the manner prescribed by law; and in case any bills or dues under this ordinance shall remain unpaid at the expiration of three months after demand for payment as aforesaid, the said treasurer shall cause the same to be collected, by a resort to the proper legal process.

Same duties to be performed in relation to common sewers heretofore constructed. Ibid. SECT. 8. It shall also be the duty of the board of aldermen to make assessments for all common sewers heretofore constructed by the city, the expenses of which have not already been assessed and collected, in the same manner as it is made their duty by this ordinance to make assessments for those which may hereafter be constructed; and the said superintendent shall render all the services and perform all the duties, in regard to the common sewers heretofore constructed, the expenses of which have not already been assessed and collected which he is herein required to render and perform in regard to those hereafter to be constructed.

Board of aldermen may compel owners of land to make drains. Ibid. SECT. 9. The board of aldermen shall have power, in all cases where there is any common sewer in any street or highway, to cause every owner of land, adjoining such street or highway, his agent or tenant, to make a sufficient drain from his house, yard, or lot, whenever in their opinion the same shall be necessary, and shall thereupon give such owner, agent, or tenant notice in writing, specifying the time within which such drain shall be completed; and in case the said owner, agent, or tenant shall neglect to complete the same within the time specified, the board of aldermen shall cause the same to be done; and shall recover the whole amount of the expense thereof, together with ten per cent. damages, by an action to be brought in the name of the city of Boston, before any court proper to try the same; *provided, however*, that in no case shall the ten per cent. claimed by way of damage, exceed the sum of twenty dollars.

May make same at owners expense, in case they neglect. Ibid. Rain-water from roofs may be carried into common sewers. Ibid. SECT. 10. It shall be lawful for all persons, having the care of any buildings, at their own expense, to carry the rain-water from the roofs of said buildings into any common sewers, free of any charge from the city; *provided*, that the same be done by tight water spouts and tubes under ground, and under the direction of the board of aldermen.

SECT. 11. Every person entering his or her particular drain into any common sewer, without a permit in writing from the board of aldermen, or superintendent of common sewers hereinafter mentioned, shall forfeit and pay the sum of twenty dollars, and shall also be liable to pay all such damage by way of indemnification as the said board shall deem just and reasonable. And all persons to whom the said permits shall be granted, shall pay therefor a sum not less than ten dollars, as the board of aldermen may fix and determine.

Penalty for entering drain into common sewer without permit.  
June 14, 1841.

Fee for permit.  
See *ante*,  
pp. 316, 317, § 43.

SECT. 12. All particular drains which shall enter into any common sewer now or hereafter constructed in any street or highway, shall be built of such size and materials, and in such a direction, and at such grade, and in such a manner as the board of aldermen, or some person by them authorized, shall direct; and all openings into such common sewer for the purpose of connecting a drain therewith, and all drains and repairs of drains from any house, cellar, yard, or other premises connecting with such common sewer, and all openings or excavations in any street or highway, for the purpose of constructing or repairing any private drains, shall be made by a person licensed in writing for that purpose by the standing committee on sewers, or the superintendent of sewers authorized so to do by said committee.

Drains entering common sewer, how to be built, &c.  
Dec. 31, 1862.

License.

SECT. 13. Every person who shall be licensed as provided in the preceding section shall, before performing any work authorized thereby, execute a bond to the city in such sum as the committee on sewers may prescribe, with one or more persons as sureties satisfactory to the committee on sewers or the superintendent of sewers, conditioned that he will properly make the openings into the sewer; that he will properly construct or repair the drains connecting with the sewer or any other drain; that he will leave no obstruction of any description in the sewer which he may open; that he will properly close up the excavation and restore the earth and pavement taken up, and regrade and repave the street should it settle or become out of order within one year thereafter; or if he fail to do so within twenty-four hours after being notified thereof in writing, then it shall

Person licensed to give bond to the city.  
*Ibid.*

Conditions.

Dec. 31, 1862.

be regraded or repaved at his expense by direction of the superintendent of sewers; also that he will cause a sufficient fence to be placed and fixed so as to enclose such excavation, earth, stone, or other material which may be put into the street, and to maintain such fence during the whole time such excavation, earth, or other material may obstruct the street; and that he will cause one or more lighted lanterns to be maintained in a conspicuous place over such excavation, earth, or fence, from the beginning of twilight of every evening and through every night during the time such excavation or obstruction in the street may exist; and further, that he will comply with the ordinances in relation to sewers, and drains, and streets, and to such orders and regulations as the board of aldermen may adopt for the proper government of persons licensed to construct or repair private drains or open and dig in the street or highway for that purpose; and that he will indemnify and hold harmless the city from any damage or costs to which they may be put by reason of injuries resulting to any one from neglect or carelessness in making and repairing such drain, or in performing any work connected therewith, or in properly fencing or lighting at night any excavation or obstruction caused by making or repairing such drain.

Penalty for constructing, &c., drain without permission, &c. Ibid.

SECT. 14. If any drain in any street or highway shall be constructed or repaired, or excavation be made for that purpose without the permission authorized in section thirteen, or in a mode different from that prescribed therein, the person doing such work and the owner or agent directing the same shall respectively be liable to a penalty not exceeding fifty dollars.

Permission not to exempt from assessment. Ibid.

SECT. 15. No owner or owners of any real estate to whom permission has been or shall be given to construct private drains for such estate shall by the construction of such private drains be exempted from an assessment lawfully imposed for constructing common sewers in the same vicinity.

Drains to be cleansed, repaired, &c. Ibid.

SECT. 16. Whenever any drain connecting with any common sewer or drain shall become clogged, obstructed, broken, out of order, or detrimental to the use of the sewer or other drain, or unfit for the purposes of drainage, the owner, agent,

occupant, or person having charge of any building, yard, lot of land, or other premises which are drained by said drain, shall, when directed by the board of aldermen, within five days after notice in writing from said board, remove, reconstruct, alter, cleanse, or repair said drain as the condition of said drain may require.

In case of neglect or refusal to remove, reconstruct, repair, alter, or cleanse said drain for the space of five days, the board of aldermen shall cause the same to be removed, reconstructed, repaired, altered, or cleansed as they may deem expedient, at the expense of the owner, agent, occupant, or other person, as aforesaid, and such owner, agent, occupant, or other person shall also be liable to a penalty not exceeding fifty dollars.

Penalty for not cleaning drains, &c.  
Ibid.

SECT. 17. Any owner, agent, occupant, or other person having charge of any building, yard, lot of land, or other premises which are drained into any common sewer or drain, who shall permit any gravel, sand, ashes, or any substance or matter which shall form a deposit or obstruction in any common sewer or drain, to flow or pass into the same, shall be liable to a penalty of not more than twenty dollars for each offence.

Penalty for permitting obstruction to sewer or drain.  
Ibid.

And said owner, agent, occupant, or other person as aforesaid shall, when directed by the board of aldermen, within ten days after notice in writing to that effect from said board, provide to his or their drain a sufficient cesspool or catch-basin, or if one already exist, to clean out, repair, or alter the same, and provide such other means as shall prevent any substance or matter from passing into the sewer or drain which shall cause a deposit or obstruction therein.

Obstructions, how removed and prevented.  
Ibid.

In case of neglect or refusal to provide a cesspool or catch-basin, or clean out, repair, or alter such cesspool or catch-basin if one exist, for the space of five days, the board of aldermen shall cause to be constructed a suitable and sufficient cesspool or catch-basin, or if one exists to repair, alter, and clean the same, and provide such other means to prevent any substance or matter from passing into the sewer or drain that shall cause a deposit or obstruction therein, as they may deem expedient, at the expense of the owner, agent, occupant, or other person

Proceedings if owner neglects to provide cesspool, &c.  
Ibid.

Penalty for not cleaning, &c., cesspool.  
Dec. 31, 1862.

having charge of the premises as aforesaid, and such owner, agent, occupant, or other person shall also be liable to a penalty not exceeding twenty dollars.

Repealing clause.  
Ibid.

Vaults may be connected with common sewers by permission of superintendent of sewers.  
May 21, 1863.  
See *Health*, ante, pp. 316, 317.

SECT. 18. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECT. 19. The superintendent of sewers, under the direction of the board of aldermen, is authorized to permit under such restrictions, and on the payment of such sum, not exceeding thirty dollars, as they shall deem expedient, the construction of sufficient passageways or conduits under ground for the purpose of conveying the contents of any vaults into any common sewer or drain.

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## SOLICITOR.

### ORDINANCE.

1. City solicitor to be chosen. His qualifications.
2. His duties.
3. To commence and prosecute suits

for the city. To defend suits against the city. To appear before the legislature and committees thereof. To furnish legal opinions.

4. Salary. Expenses, &c.

### ORDINANCE.<sup>1</sup>

City solicitor to be chosen.  
His qualifications.  
April 29, 1846.

SECTION 1. On the first Monday of February, annually, or within sixty days thereafter, there shall be elected, by concurrent vote of both branches of the city council, a solicitor for the city of Boston, who shall be a resident citizen thereof, and who shall have been admitted an attorney and counsellor of the courts of the commonwealth, and who shall not hold any other office under the city government during the period for which he is elected. He shall hold his office for one year from the first Monday of April in the year in which he shall be elected, unless

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<sup>1</sup> An ordinance providing for the appointment of a city solicitor, and prescribing his duties, passed April 29, 1846.

sooner removed; and he shall be removable at the pleasure of April 29, 1846. the city council, and vacancies may be filled at any time for the unexpired term.

SECT. 2. It shall be the duty of said solicitor, by himself, His duties. or by some person by him duly authorized, for whose conduct, Ibid. skill, and faithfulness he shall be accountable, to draft all bonds, deeds, obligations, contracts, leases, conveyances, agreements, and other legal instruments, of whatever nature, which may be required of him, by any ordinance or order of the board of aldermen, or of the city council, or which, by any ordinance or order heretofore passed, may be requisite to be done and made by the city of Boston, and any person or persons contracting with the city in its corporate capacity, and which, by law, usage, or agreement, the city is to be at the expense of drawing.

SECT. 3. It shall be the duty of said city solicitor to com- To commence mence and prosecute all actions and suits to be commenced by and prosecute the city before any tribunal in this commonwealth, whether in suits for city. law or equity; and also to appear in, defend, and advocate the Ibid. rights and interests of the city, or any of the officers of the city, Solicitor to in any suit or prosecution for any act or omission in the dis- defend suits charge of their official duties, wherein any estate, right privi- against city or lege, ordinances, or acts of the city government, or any breach its officers. of any ordinance, may be brought in question. And said solicitor shall also appear before the legislature of the common- To appear be- wealth, or any committee thereof, whether of either or both fore legislature branches of the same, and there, in behalf of the city, represent, and committees answer for, defend, and advocate the interests and welfare of thereof. said city, whenever the same may be directly or incidentally Ibid. affected, whether to prosecute or defend the same; and he shall in all matters do all and every professional act, incident to the office, which may be required of him by the city government, or by any joint or special committee thereof, or by any ordinance or order heretofore passed; and he shall, when required, fur- To furnish legal nish the mayor, the board of aldermen, the common council, opinions. or any joint or special committee of either branch thereof, and to Ibid. any officer of the city government, who may require it in the

April 29, 1846. official discharge of his duties, with his legal opinion on any subject touching the duties of their respective offices.

Salary, ex-  
penses, &c.  
Ibid.

SECT. 4. In full compensation for all the services of said solicitor, he shall receive such salary as the city council may from time to time fix and determine. In all cases, however, when his attendance may be required out of the city, his reasonable travelling expenses shall be allowed him; and in suits and prosecutions, he shall be entitled to receive and retain for his own use the legal taxable costs which may be recovered of the adverse party, where the city shall recover the same, according to the usage and practice of the courts.

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## STATE AID.

### STATUTES.

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| 1. Cities may raise money and use it to aid the wife and children of volunteer.             | regular army pay, except, &c. No pay for drilling.   |
| 2. Same subject.  | 13. Cities may organize an armed force against an attack from the sea.   |
| 3. Aid to continue how long.  | 14. Former acts of cities, as to bounties, &c., ratified.  |
| 4. Aid for widow, children, &c., of deceased volunteer.                                     | 15. Aid to wives, &c., of seamen.  |
| 5. Aid for wife, children, &c., of disabled volunteer.                                      | 16. How given.   |
| 6. Limit to aid to widow, &c., of deceased or disabled volunteer.                           | 17. No reimbursement from state.   |
| 7. "Children" to include step-children.   | 18. Money remitted by any volunteer to the state treasurer, for the use of any person, to be received. Such money not subject to trustee process.          |
| 8. Cities to be reimbursed from state treasury.   | 19. State treasurer to give notice to city treasurer, who shall draw and pay over the same.  |
| 9. Cities to report annually to state auditor.  | 20. If money is not drawn from city treasurer in thirty days, he shall return it to state treasurer, who shall hold it, and allow five per cent. interest. |
| 10. No aid to wife, &c., of commissioned officer, or to those having aid from other states. | 21. If money is remitted and no person is named to receive it, &c.   |
| 11. Cities may raise money to fulfil contracts of enlistment, but not to make new ones.     |  |
| 12. Volunteers to receive only the  |  |

- |   |   |
|---|---|
| 22. Cities not hereafter to raise and expend money for bounties, &c., except, &c.<br>23. Enlisted or drafted soldiers who receive bounty money, &c., not to be discharged on <i>habeas corpus</i> until such money, &c., is refunded to provost marshal.<br>24. Cities may raise, &c., money to aid families, &c., of drafted men.<br>25. Cities not to raise, &c., money to discharge from service persons drafted.<br>26. City officers not to pay money of cities for such purposes. To be personally liable for such payment.<br>27. Penalty for such payment.<br>28. City clerk to make record of sol- | diers and officers composing the city's quota. Record to state what particulars.<br>29. City clerk shall keep record of seamen, &c.<br>30. Blank books for records, to be furnished by the adjutant-general.<br>31. Expense to be paid by city.<br>32. Reimbursement to city for bounties paid volunteers under the calls of the President in July and August, 1862.<br>33. Amount received for volunteers transferred to fill quota of any other city, &c., to be paid over to such city, &c.<br>34. How city may elect to pay its portion of the tax. |
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STATUTES.<sup>1</sup>

1. Any town or city may raise money by taxation, or otherwise, and, if necessary, apply the same under the direction of its selectmen, or mayor and aldermen, or city council, for the aid of the wife, each child, parent, brother, and sister of, and dependent upon, any one of the inhabitants of said town or city, who as a part of the quota of this commonwealth, has been, or hereafter shall be duly enlisted and mustered into the volunteer service of the United States.

Cities may raise money and use it to aid the wife and children of volunteer.  
 1861, 222.  
 1862, 66.

2. Any town or city may raise and apply money as aforesaid, for the aid of such wife, child, parent, brother, and sister of any one of its inhabitants who had been duly enlisted and mustered into said volunteer service as a part of the quota of any other state, before the passage of this act. The provisions of this section shall apply to those volunteers who, although not inhabitants of the commonwealth at the time of enlistment, have become such by the establishment of the boundary line between the states of Massachusetts and Rhode Island.

Same subject.  
 Ibid.

1862, 166.

<sup>1</sup> The principal statutes are: An act in aid of the families of volunteers, and for other purposes, passed May 23, 1861; 1861, c. 222; and the following acts in addition thereto; 1862, c. 66; 1862, c. 166; 1863, c. 79.

Aid to continue  
how long.  
1862, 66, § 3.

3. Money raised as aforesaid, may be applied as aforesaid, from and after the time of such enlistment, and while such inhabitant has been, or shall hereafter be, actually in said volunteer service ; and all appropriations and expenditures heretofore made, or which shall hereafter be made, by the selectmen, or mayor and aldermen, or city council, of any town or city, for any of the purposes expressed in the foregoing sections, for any persons who have been, or are now in the said service, notwithstanding any actual or supposed irregularity in their original enlistment, are hereby declared valid.

Aid for widow,  
children, &c.,  
of deceased  
volunteer.  
1863, 79, § 1.

4. Money may be raised and applied as aforesaid for the aid of the widow, children, parent, brothers, or sisters of any inhabitant of said town or city, and upon whom they were dependent, who may have died while in the service of the United States ; *provided*, said inhabitant were a volunteer duly enlisted and mustered into the service of the United States, and his wife, children, parent, brothers, or sisters were entitled, prior to the decease of said volunteer, to receive aid under the provisions of sections one, two, and three.

Aid for wife and  
children, &c., of  
disabled volun-  
teer.  
Ibid. § 2.

5. Money may be raised and applied as aforesaid for the aid of the wife, children, parent, brothers, or sisters of any inhabitant of said town or city, and upon whom they were dependent who may have been disabled, while in the service of the United States, and discharged from said service by reason of any disability contracted in or caused by said service, thereby rendering said inhabitant unable to provide for those dependent upon him ; *provided*, that said inhabitant were a volunteer duly enlisted and mustered into the service of the United States, and his wife, children, parent, brothers, or sisters were entitled prior to his said discharge, to receive aid under the provisions of sections one, two, and three ; and *provided, also*, that the provisions of this section shall apply to the widow, children, parent, brothers, or sisters of any such volunteer deceased after his discharge by reason of disability or disease contracted while in the service.

Limit to aid to  
widow, &c., of  
deceased or

6. No sums shall be so applied to the widow, wife, children, parent, brothers or sisters of any such deceased or disabled

volunteer for a period of more than one year, or after the payment to them, or either of them, of any sums under the provisions of the Pension Act of congress, passed July fourteenth, in the year one thousand eight hundred and sixty-two; and if any town or city has furnished aid to the widow, wife, children, parent, brothers, or sisters of any such deceased or disabled volunteer prior to March twelve, eighteen hundred and sixty-three, the time during which said aid has been furnished shall be included in computing the period of one year, and said town or city shall have the same right of reimbursement as in cases of aid furnished after March twelve, eighteen hundred and sixty-three.

7. The word "children" shall be construed to include step-children.

disabled volunteer.  
1863, 79, § 4.

8. Of the sums applied as aforesaid, there shall be annually reimbursed from the state treasury, to the town or city so applying the same, a sum not exceeding one dollar per week for the wife, and one dollar per week for each child and parent aforesaid; *provided*, that the whole sum so reimbursed shall not exceed twelve dollars per month, for all persons named in this section, dependent upon any such inhabitant at the time he was or shall be duly enlisted and mustered into said volunteer service.

"Children" to include step-children.  
Ibid.  
Cities to be reimbursed from state treasury.  
Limit.  
1862, 66, § 4.

9. On or before the fifth day of January in each year, there shall be deposited in the office of the auditor of the commonwealth, by each town and city raising and applying money as aforesaid, a full and particular report, setting forth the names of the inhabitants of such town or city, for the aid of whose families money has been applied as aforesaid, the names and ages of the several persons for the aid of whom money has been applied as aforesaid, the relation such persons severally bear to such inhabitants, the sums paid to each of such persons, and the time when the same were paid. And no reimbursement shall be made from the state treasury to such town or city as provided in section eight, until such report has been sworn to by a majority of the selectmen of such town, or the mayor and a majority of the aldermen of such city, deposited as aforesaid, and carefully

Cities to report annually to state auditor, &c.  
Ibid. § 5.

1862, 66, § 5. examined, scrutinized, and approved by said auditor, and a statement so certified and sworn to shall be made to the said auditor  
 1861, 222. on or before the fifth day of January in each year, of the full amount due such city or town for aid furnished in accordance herewith.

No aid to wife, &c., of commissioned officer, or to those having aid from any other state. Ibid. § 6. 10. The foregoing shall not authorize the reimbursing money applied for the aid of any wife, child, or parent aforesaid, of any commissioned officer in said volunteer service, nor for the aid of any person dependent upon any volunteers from this state, enlisted into regiments of any other state, who receive aid from such other state.

Cities may raise money to fulfil contracts of enlistment, but not to make new ones. 1861, 222, § 2. 11. Any city or town may by vote raise money to defray any expense already incurred, or to carry out and fulfil any contract heretofore made with, or in behalf of any of its inhabitants who may have enlisted as members of the volunteer militia, or who have been, or may be called into the service of the United States; but all contracts now subsisting between any town or city and any member of the volunteer militia as such, shall terminate in ninety days from the date of such contract or the date of enlistment if subsequent to such contract and previous to May twenty-three, eighteen hundred and sixty-one.

Volunteers to receive only regular army, &c, pay, except, &c. Ibid. § 3. 12. No compensation, in addition to the regular pay of the army or navy of the United States, other than that mentioned in section eleven, shall be given by any town or city to any of their inhabitants, who, as volunteers, or otherwise, shall enlist in the service of the United States; but all contracts made with any members of the volunteer militia who have been mustered into the service of the United States for the term of three months, shall be valid during such term, and no pay shall hereafter be allowed by any town or city for the expense of drilling.

No pay for drilling. 13. Any city or town, when danger from attack from the sea is apprehended, is authorized to organize an armed police to guard against such an attack, and may provide, by taxation, to maintain the same. Such force may, for this purpose, act in any part of the county within which such city or town may be situated.

Cities may organize an armed force against an attack from the sea. Ibid. § 4. 14. The statute of February twenty-seven, eighteen hun-  
 Former acts of

dren and sixty-three, enacts that the acts and doings of cities and towns in paying or agreeing to pay bounties and recruiting expenses for soldiers already furnished by them upon the requisition of the United States, and upon the call of the governor for the present war, together with taxes that have been or may be assessed, and payments and obligations that have been or may be made or given by them for those objects, are ratified, confirmed, and made valid.

cities as to  
bounties, &c.,  
ratified.  
1863, 38.

15. Any town or city may raise money by taxation, and apply the same, in cases of necessity, under the direction of their selectmen, or the mayor and aldermen, respectively, in aid of the wife and minor children of such persons as shall be in actual service, as seamen, in the United States navy.

Aid to wives,  
&c., of seamen.  
1862, 151, § 1.

16. Such aid may be given in the same manner, to the widow and minor children of such seamen, named in section fifteen, as have died, or shall hereafter die, in such actual service.

How given.  
Ibid. § 2.

17. No reimbursment shall be made from the state, to any city or town, for any aid furnished under sections fifteen and sixteen.

No reimburse-  
ment.  
Ibid. § 3.

18. The treasurer and receiver-general is authorized and required to receive and distribute all money which shall be remitted to him, for the use of any person in this commonwealth, by any of the Massachusetts volunteers in the service of the United States, under the provisions of an act of congress, entitled "An act to provide for allotment certificates among the volunteer forces," or under any other system which now or hereafter may be duly established by law, and to receive and distribute all money which shall be remitted to him for the use of any person in said commonwealth by any of said volunteers; but the provisions of the thirtieth section of the fifteenth chapter of the General Statutes shall not apply to any money to be received or distributed under the provisions of this act,<sup>1</sup> nor shall such money be subject to attachment by trustee process, or otherwise.

Money remitted  
by a volunteer  
to the state  
treasurer for  
the use of any  
person to be re-  
ceived.  
1862, 62, § 1.

Such money  
not subject to  
trustee process.  
Ibid.

<sup>1</sup> An act concerning the custody and distribution of funds of the Massachusetts volunteers, passed March 11, 1862, and taking effect upon its passage. The whole act is given in sections eighteen to twenty-one inclusive, of the text.

State treasurer to give notice to city treasurer who shall draw and pay over the same.  
1862, 62, § 2.

19. When the treasurer and receiver-general shall receive money under the provisions of this act,<sup>1</sup> for the use of any person, he shall forthwith give notice thereof in writing to the treasurer of the city or town in which such person resides, setting forth the amount thereof, the name of the volunteer by whom it was remitted, and the name of the person for whose use it is held; and every city or town treasurer, upon receipt of such notice, shall forthwith draw upon the treasurer and receiver-general therefor, give notice thereof in writing to the person for whose use it is held, and pay the same on demand to the person entitled thereto, taking a proper receipt or voucher therefor, and returning it to the treasurer and receiver-general.

If money is not drawn from city treasurer, he shall return it to state treasurer, who shall hold it and allow five per cent. interest.  
Ibid. § 3.

20. If any money to be received by any city or town treasurer, under the provisions of this act,<sup>1</sup> shall not be taken by the person entitled thereto as aforesaid, within thirty days after such notice to him, the said treasurer shall return the same to the treasurer and receiver-general, and the said money shall be held by him until it shall be called for by the person entitled thereto; and when it shall be so called for, the recipient thereof shall be entitled to interest thereon, at the rate of five per cent. per annum, from the time the same shall have been last received by the treasurer and receiver-general.

If money is remitted and no person is named to receive it, &c.  
Ibid. § 4.

21. When any volunteer aforesaid shall, under the provisions of this act,<sup>1</sup> remit money without designating any person to whose use the same shall be held, it shall be received by the treasurer and receiver-general, held by him subject to the order of said volunteer, and shall draw interest at the rate of five per cent. per annum.

Cities not hereafter to raise, &c., money for bounties, &c., except.  
1863, 91, § 1.

22. No town or city shall hereafter raise or expend money for the purpose of offering or paying bounties to volunteers; *provided, however*, that the provisions of this section shall not apply to the action of any town or city prior to the passage of this act;<sup>2</sup> and *provided, also*, that any city or town may offer

<sup>1</sup> Act of March 11, 1862. See foot-note on page 671.

<sup>2</sup> An act to promote enlistments and regulate recruiting, passed March 16, 1863, and taking effect upon its passage.

and pay bounties not exceeding one hundred dollars for each <sup>1863, 91, § 1.</sup> volunteer to be enlisted and mustered into the volunteer military service of the United States for three years, towards supplying any existing deficiency in its quota of troops called for by the President, and ordered to be drafted during the year eighteen hundred and sixty-two. It shall not be lawful for any person, within the territory or jurisdiction of this commonwealth, to recruit for or enlist in military service, except under the authority of the governor thereof, or of the President of the United States; and every person so offending shall be deemed guilty of a misdemeanor, and fined not exceeding one thousand dollars, to be prosecuted and recovered before any competent court of the commonwealth.

23. After April seventeen, eighteen hundred and sixty-three, no person enlisted or drafted into the military service of the United States, or substituted for any person so drafted, who has received, or may hereafter receive, bounty money or advance pay in consideration of his contract of enlistment, or of being so drafted or substituted into said service, shall be discharged from such service, upon a writ of *habeas corpus*, on the ground that he was a minor at the time of his enlistment, or on any other ground, until he shall have paid over to the provost-marshal of the district where he is commorant such bounty money and advance pay, and until he shall have delivered up to said provost-marshal all clothing, arms, and military accoutrements by him received from any officer of the United States or of the commonwealth of Massachusetts, for his equipment as a soldier; *provided*, that in cases of enlistment procured by fraud, the court in their discretion may discharge the enlisted person upon such terms and conditions as justice may require.

Enlisted or drafted soldiers who receive bounty money, &c., not to be discharged on *habeas corpus* until such money, &c., is refunded to provost-marshal. 1863, 154, § 1.

24. Any city or town may raise money by tax or otherwise, in aid of the families and dependants of those persons who may be drafted and serve in the army of the United States, under the law passed by congress, entitled, “ An act for enrolling and calling out the national forces, and for other purposes,” and approved March the third, in the year one thousand eight hundred

Cities may raise, &c., money to aid families, &c., of drafted men. 1863, 176, § 1.

1863, 176, § 1. and sixty-three, in the same manner and under the same restrictions as money is raised and applied to the aid of families and dependants of volunteers, as prescribed in sections one to seven inclusive, and the provisions of sections eight to ten inclusive, in relation to reimbursement from the commonwealth to the towns, shall be applicable to the aid thus furnished under the provisions of this section.

Cities not to raise, &c., money to discharge from service persons drafted.  
1863, 122, § 1.

25. No city or town shall vote or appropriate any money to relieve or discharge from the military service of the United States any person who shall be called or drafted into such service under or by authority of the act of congress, entitled “An act for enrolling and calling out the national forces, and for other purposes,” approved on the third day of March, in the year one thousand eight hundred and sixty-three; and every such vote and appropriation shall be void and of no effect.

City officers not to pay money of city for such purpose.  
Ibid. § 2.

26. No city or town officer shall pay or disburse any money in his custody or possession belonging to his city or town, to relieve or discharge from the military service of the United States, any person who shall be called or drafted into such service under or by authority of the aforesaid act of congress; nor shall any city or town officer pay or disburse any money in his custody or possession belonging to his city or town, for any bounty or other gratuity to any volunteer or other person who has been or shall be enlisted or drafted into the military service of the United States, except for such bounties and aid as are authorized by existing laws; and every payment or disbursement by any city or town officer, in violation of the provisions of this section, shall be deemed to have been made by him in his own wrong, and he shall be held to account for the same to his city or town.

To be personally liable for such payment.  
Ibid.

Penalty for such payment.  
Ibid. § 3.

27. Any city or town officer who shall offend against the provisions of the next preceding section, shall, upon conviction thereof, be punished by a fine not exceeding two thousand dollars, or by imprisonment not exceeding two years in the jail or house of correction.

City clerk to

28. It shall be the duty of the clerk of every city and town

of this commonwealth, as soon as may be after the passage of this act,<sup>1</sup> to make out a full and complete record of the names of all the soldiers and officers who compose his town's quota of the troops furnished by the commonwealth to the United States during the present rebellion, stating the place of residence, the time of enlistment of each, and the number and designation of his regiment and company; also the names of all who have resigned or been discharged, and at what time and for what cause; and all who have died in the service, and stating, when practicable, at what time and place and the cause of death, whether by disease, accident, or on the field of battle; and the promotions of officers and from the ranks, and the date thereof; and the names of all absentees, if any; and all such other facts as may relate strictly to the military career of each soldier and officer. The record shall also, as far as practicable, state the time and place of birth, names of parents, previous occupation, term of enlistment, time of entering the service, and whether married or single, of all such soldiers and officers.

make record of  
soldiers and  
officers com-  
prising the  
city's quota.  
Report to state  
what.  
1863, 65, § 1.

1863, 229, § 1.

29. The clerk of each city and town shall also keep a full and complete record of the names of all seamen and officers, residents of such cities and towns, engaged in the naval service of the United States, during the present rebellion, which record shall, as far as practicable, state the time and place of birth, name of parents, the date at which he entered such service, his previous occupation, whether he was married or single, the vessel or vessels on which he served, the battles or kind of service in which he was engaged, whether he resigned, or was discharged, or deserted, and the date of such resignation, discharge, or desertion, the cause of such discharge or resignation, his promotions, and the dates, occasions, and nature of the same; and, if he died in the service, it shall state the date and cause of his death; and such record shall contain any and all such other facts as relate to the naval career of such seamen or officers during such rebellion.

Record of sea-  
men, &c.  
Ibid. § 2.

<sup>1</sup> An act to preserve a record of our soldiers and officers, passed March 7, 1863, and also an Act in addition thereto, passed April 29, 1863.

Blank books for  
records.  
1863, 220, § 3.

30. The adjutant-general shall prepare suitable blank books, in conformity with the requirements of this act, with proper blanks for marginal notes, and furnish the same to the several cities and towns at cost, on the application of the clerk thereof.

Expenses to be  
paid by city.  
Ibid. § 4.

31. All the expenses incurred in making said records, with the cost of the record books, shall be paid by the several cities and towns, and the records, when completed, shall be deposited and kept in the city and town clerk's office.

Reimburse-  
ments to cities  
for bounties  
paid certain  
volunteers.  
1863, 218, § 2.

32. The act of April twenty-nine, eighteen hundred and sixty-three, provides for the reimbursement from the state treasury of money paid by any city or town as bounties to volunteers, duly enlisted and mustered into the military service as a part of the quotas of Massachusetts under the calls of the President in the months of July and August, eighteen hundred and sixty-two; the amount not to exceed one hundred dollars for each such volunteer, and in no case to exceed the sum actually paid. Each city and town must, before July one, eighteen hundred and sixty-three, make a sworn return to the governor of the names of all volunteers to whom bounties have been paid, the amount paid to each, the regiment in which they were enlisted and mustered into service, and such other facts as the governor shall require; the governor prescribing the forms of the returns and naming the city or town officers who are to swear to them. No city or town is to be reimbursed unless such return is duly made. The governor is to determine the amount to be paid to each city or town, and to certify the same to the state treasurer, and to the assessors of cities and towns. The aggregate of the amounts so certified shall be apportioned among the several cities and towns in the state, in the same manner as any general tax is apportioned, and the treasurer of each city or town shall pay its proportion thereof, (the same being assessed and collected in the same manner as other state taxes,) on or before December one, eighteen hundred and sixty-three, to the state treasurer. The selectmen or assessors of each city or town must, before October one, eighteen hundred and sixty-three, return to the state treasurer the name of the city or town treasurer, and the sums each is required to collect. If

Ibid. § 2.

Ibid. §§ 4-7.

the city or town does not pay its part of such tax within the time specified, it shall pay one per cent. per month thereon in addition during such delinquency, from December one, eighteen hundred and sixty-three. If it remains unpaid after January one, eighteen hundred and sixty-four, the state treasurer may have summary process from the supreme judicial court, or any judge of that court, to compel the payment thereof, under such penalty as the court or justice shall order. When the city or town has paid its proportion of the tax to the state treasurer, the governor shall draw his warrant on the treasurer in favor of the city for the sum to which it is entitled.

33. If any city or town is reimbursed on account of any such volunteers who have been transferred to fill the quota of any other city or town, the amount so received by such city or town shall be paid over to such other city or town; the amount so to be paid not to exceed the sum originally paid for such transfer; and an action of contract may be maintained to recover the same. If hereafter, such volunteers are transferred back, pursuant to an agreement to that effect, the amount so paid shall be deducted from the sum agreed to be paid for such retransfer.

Amount received for volunteers transferred to fill quota of any other city, &c., to be paid over to such city, &c. Ibid. § 3.

34. The city may by a vote of the city council, elect to pay its portion of the tax, as follows: The state treasurer shall credit the city with the amount it is entitled to receive as reimbursement, and charge the city with its proportion of the tax. If these sums are equal, the state treasurer shall then give the city a receipt in full for the tax. If the balance is against the city, it is to be paid to the treasurer, who shall then deliver his receipt in full; if the balance is in favor of the city, the treasurer shall give his receipt in full; and the governor shall draw his warrant in favor of the city for the amount. If the city adjusts its tax in this way, it will have no further claim for reimbursement, and the city treasurer must give his receipt in full therefor to the state treasurer. If the tax is settled in this way, it must be done within the same time, and subject to the same process as in the other mode.

How city may elect to pay its portion of the tax. Ibid. § 9.

Ibid. § 10.

STAVES AND HOOPS.

STATUTES.	
1. Cullers of hoops and staves to be chosen.	3. Of hogshead hoops, their length, size, &c.
2. Quality and size of staves.	4. Fees for culling.
	5. Penalty for fraud in culling.

STATUTES.

Cullers of hoops and staves to be chosen.  
G. S. 49, § 84.

1. In every maritime place from which staves are usually exported, there shall be annually chosen two or more suitable persons to be viewers and cullers of staves and hoops, who shall be sworn.

Quality and size of staves.  
Ibid. § 85.

2. White oak butt staves shall be at least five feet in length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge and every part thereof; white oak pipe staves shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three quarters of an inch thick on the heart or thinnest edge; white oak and red oak hogshead staves shall be at least forty-two inches long, and not less than half an inch thick on the heart or thinnest edge; white oak and red oak barrel staves for foreign market shall be thirty-two inches long, and for home use thirty inches long, and shall average half an inch thick on the heart or thinnest edge; white oak and red oak hogshead and barrel staves shall be at least four inches in breadth, and none less than three inches in breadth in the narrowest part, and those of the breadth last mentioned shall be clear of sap; and all staves shall be well and proportionably split.

Of hogshead hoops, their length, size, &c.  
Ibid. § 86.

3. Hogshead hoops that are exposed to sale or exported shall be from ten to thirteen feet in length, of white oak or walnut, of good and sufficient substance, and well shaved; those of oak shall not be less than one inch broad at the least end, and those of walnut shall not be less than three quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve, and thirteen feet respectively, shall be made up in distinct bundles by themselves. If hoops of less dimensions than those prescribed by law are

packed, or if a bundle contains less than thirty hoops, the bundle shall be forfeited, and may be seized by the culler of hoops, and libelled for the benefit of the place where it is offered for sale.

4. Cullers shall be allowed for their time and services fifty cents a thousand for hoops, twenty-eight cents a thousand for barrel staves, thirty-three cents a thousand for hogshead staves, forty cents a thousand for pipe staves, and forty-four cents a thousand for butt staves, as well refuse as merchantable; the merchantable to be paid for by the buyer, the refuse by the seller.

6. If a culler connives at or is guilty of fraud in culling staves or hoops, he shall forfeit fifty dollars for each offence; and if he refuses to perform service when requested shall forfeit five dollars.

Fees for culling.  
Ibid. § 87.

Penalty for fraud in culling.  
Ibid. § 88.

## STEAM-ENGINES, FURNACES, AND BOILERS.

### STATUTES.

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| <ol style="list-style-type: none"> <li>1. Steam-engines and furnaces not to be used in certain cases without license.</li> <li>2. Public notice of applications for license, &amp;c.</li> <li>3. Municipal officers may regulate furnaces, steam-engines, &amp;c.</li> <li>4. Appeal and proceedings thereon.</li> <li>5. Court may restrain use while appeal is pending.</li> <li>6. Verdict of jury may affirm, &amp;c., order. Acceptance of verdict.</li> <li>7. Recovery of costs.</li> <li>8. Engines and furnaces when common nuisances, &amp;c.</li> </ol> | <ol style="list-style-type: none"> <li>9. Aldermen, &amp;c., may examine steam-engines and prohibit use.</li> <li>10. Steam-boilers, when may be removed as nuisances.</li> <li>11. Not to be made or used, &amp;c., without safety-plugs.</li> <li>12. Penalty for removing safety-plugs.</li> <li>13. For making, &amp;c., boilers without safety-plugs.</li> <li>14. Use within five hundred feet of dwelling-house or public building prohibited, unless licensed.</li> <li>15. Engine erected without license to be deemed common nuisance.</li> <li>16. Act void unless adopted by city.</li> </ol> |
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### STATUTES.

1. No furnace for melting iron or making glass, and no stationary steam-engine designed for use in any mill for planing

Steam-engines and furnaces not to be used

in certain cases  
without license.  
G. S. 88, § 33.

Proviso.

Public notice of  
applications for  
license, &c.  
Ibid. § 34.

Municipal offi-  
cers may regu-  
late furnaces,  
steam-engines,  
&c.  
Ibid. § 35.

May be ad-  
judged a nui-  
sance.  
Ibid.

or sawing boards or turning wood, or in which any other fuel than coal is used to create steam, shall be erected or put up to be used in any city or town by which the provisions relating thereto of chapter one hundred [and] ninety-seven of the Statutes of eighteen hundred and forty-five<sup>1</sup> or chapter ninety-six of the Statutes of eighteen hundred and forty-six respectively have been adopted, or by which this and the seven following sections shall have been adopted, at a legal meeting of the city council of the city or the inhabitants of the town called for that purpose, unless the mayor and aldermen or selectmen thereof have granted a license therefor, prescribing the place where the building in which such steam-engine or furnace is to be used shall be erected, the materials and construction thereof, with such regulations as to the height of flues and protection against fire as they deem necessary for the safety of the neighborhood. Such license may be granted on a written application, and shall be recorded in the records of the city or town.

2. Upon application for such license the mayor and aldermen or selectmen shall assign a time and place for the consideration of the same and cause at least fourteen days' public notice thereof to be given, at the expense of the applicant, in such manner as they may direct, in order that all persons interested may be heard thereon.

3. In any city or town by which chapter one hundred and ninety-seven of the Statutes of eighteen hundred and forty-five has been adopted, or by which sections thirty-three to forty inclusive (being sections one to eight inclusive of this text) shall have been adopted at a legal meeting of the city council of the city or inhabitants of the town called for that purpose, the mayor and aldermen or selectmen, after due notice in writing to the owner of such steam-engine or furnace, except for making glass, erected or in use therein before the time of such adoption, and a hearing of the matter, may adjudge the same to be dangerous or a nuisance to the neighborhood, and make and record an order prescribing such rules, restrictions, and alterations, as

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<sup>1</sup> Adopted by the city council of Boston, April 21, 1845.

to the building in which the same is constructed or used, the construction and height of its smoke-flues, with such other regulations as they deem necessary for the safety of the neighborhood; and the city or town clerk shall deliver a copy of such order to a constable, who shall serve on the owner an attested copy thereof, and make return of his doings thereon to said clerk within three days from the delivery thereof to him. G. S. 88, § 35.

4. The owner of a steam-engine or furnace who is aggrieved by such order, may apply to the superior court, or a justice thereof in vacation, for a jury; and the court or justice shall issue a warrant for a jury to be empanelled by the sheriff in like manner as is provided in chapter forty-three of the General Statutes in regard to the laying out of highways. Such application shall be made within three days after the order is served upon the owner, and the jury shall be empanelled within fourteen days from the issuing of the warrant. Appeal, and proceedings thereon. Ibid. § 36.

5. The court or justice, on granting the application for a jury may issue an injunction restraining the further use of such engine or furnace until the final determination of the application. Court may restrain use while appeal is pending. Ibid. § 37.

6. The jury may find a verdict either affirming or annulling the order in full, or making alterations therein; which verdict shall be returned by the sheriff to the next term of the court for acceptance as in the case of highways, and when accepted shall take effect as an original order. Verdict of jury may affirm, &c., order. Acceptance of verdict. Ibid. § 38.

7. If the order is affirmed, costs shall be recovered by the city or town against the applicant; if it is annulled, damages and costs shall be recovered by the complainant against the city or town; and if it is altered, the court may render such judgment as to costs, as to justice shall appertain. Recovery of costs. Ibid. § 39.

8. Any steam-engine or furnace erected or used contrary to the provisions of the seven preceding sections, shall be deemed a common nuisance. And the mayor and aldermen or selectmen shall have like authority to remove the same as is given to boards of health to remove nuisances by sections eight, nine, and ten of chapter twenty-six of the General Statutes.<sup>1</sup> Engines, &c., when common nuisances, &c. Ibid. § 40.

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See *Health*, Statutes, §§ 8, 9, 10, *ante*, p. 291.

Aldermen, &c.,  
may examine  
steam-engines,  
&c., and pro-  
hibit use.  
G. S. 88, § 41.

Use to be sus-  
pended.  
Ibid.

9. The mayor and aldermen or selectmen of any city or town, or any person by them authorized, may, after notice to the parties interested, examine any steam-engine or steam-boiler therein; and for that purpose may enter any house, shop, or building; and if upon such examination it appears probable that the use of such engine or boiler is unsafe, they may issue a temporary order to suspend such use, and if after giving the parties interested, so far as known, an opportunity to be heard, they adjudge such engine or boiler unsafe, or defective, or unfit to be used, they may pass a permanent order prohibiting the use thereof until it is rendered safe. If, after notice to the owner or person having charge thereof, such engine or boiler is used contrary to either of such orders, it shall be deemed a common nuisance, without any other proof thereof than its use.

Steam-engine  
or boiler, when  
may be removed  
as nuisance.  
Ibid. § 42.

10. The mayor and aldermen and selectmen shall have the same authority to abate and remove any steam-engine or steam-boiler erected or used contrary to the provisions of the preceding section, as boards of health have to remove nuisances, by sections eight, nine, and ten of chapter twenty-six of the General Statutes.<sup>1</sup>

Not to be made  
or used, &c.,  
without safety-  
plugs.  
Ibid. § 43.

11. No person shall manufacture, set up, use, or cause to be used, any steam-boiler, unless it is provided with a fusible safety-plug made of lead or some other equally fusible material, and of a diameter of not less than one half an inch; which plug shall be placed in the roof of the fire-box, when a fire-box is used, and in all cases, in a part of the boiler fully exposed to the action of the fire, and as near the top of the water line as any part of the fire-surface of the boiler; and for this purpose, Ashcroft's "protected safety fusible plug" may be used.

Penalty for re-  
moving safety-  
plugs.  
Ibid. § 44.

12. Whoever without just and proper cause removes from any boiler the safety-plug thereof, or substitutes therefor any material more capable of resisting the action of the fire than the plug so removed, shall be punished by a fine not exceeding one thousand dollars.

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<sup>1</sup> See note to § 8, *ante*.

13. Whoever manufactures, sets up, knowingly uses, or causes to be used, for six consecutive days, a steam-boiler unprovided with a safety fusible plug as named in section eleven, shall be punished by fine not exceeding one thousand dollars.

Penalty for making, &c., boilers without safety-plugs, G. S. 88, § 45.

14. No stationary engine, propelled by steam or other motive power, shall be hereafter erected or put up for use in any city or town, within five hundred feet of any dwelling-house or public building, unless a license therefor shall have been first granted in the manner provided in sections one, two, and three, in respect to licenses of steam-engines, furnaces, and boilers; and such license shall be applied for, granted, and recorded in manner as therein provided.

Use within five hundred feet of dwelling-house or public building prohibited, unless licensed. 1862, c. 74, § 1.

15. Any stationary engine hereafter erected, without such license, shall be deemed a common nuisance, and the mayor and aldermen, or selectmen, shall have like authority to remove the same, as is given to them by section eight.

Engine erected without license to be deemed common nuisance. Ibid. § 2.

16. This act shall not be in force in any city or town until it has been adopted at a legal meeting of the city council of the city, or of the inhabitants of the town called for that purpose.<sup>1</sup>

Act void unless adopted by city. Ibid. § 3.

## STREETS.

## STATUTES.

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| <ol style="list-style-type: none"> <li>1. Laying out and widening streets in Boston; compensation for buildings removed and for land taken. See note.</li> <li>2. Discontinuance, &amp;c., of streets.</li> <li>3. Previous orders, &amp;c., of selectmen confirmed.</li> <li>4. Record of streets, &amp;c., required to be kept.</li> <li>5. County commissioners authorized to lay out highways, &amp;c.</li> </ol> | <ol style="list-style-type: none"> <li>6. Powers of board of aldermen of Boston.</li> <li>7. Applications for laying out, &amp;c., highways, how made.</li> <li>8. Parties may apply for jury to superior court; view to be granted.</li> <li>9. Commissioners of Middlesex, their powers in Suffolk. Warrant for jury, to whom directed; return of verdict, &amp;c.</li> <li>10. Special provisions for laying out &amp;c., streets in Boston.</li> </ol> |
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<sup>1</sup> Adopted by the city council, March 25, 1862.

11. Damages, how estimated; set off.
12. When claimants have different interests, damages to be paid to trustee, &c.
13. Trustee in certain cases to be appointed by judge of probate, &c.
14. Several parties may go to the same jury.
15. Notice to be given to persons interested to become parties.
16. Jury to apportion the damages.
17. Verdict of jury conclusive on all who have notice, &c.
18. Costs of parties, how taxed.
19. Party having notice, neglecting to appear, to be barred.
20. The laying out, &c., of highway, void in certain cases.
21. Board of aldermen to mark terminus and angles of ways; penalty for neglect.
22. When location of way is uncertain the aldermen may ascertain it, and fix the bounds.
23. Ways not laid out by the authorities, not chargeable to the public.
24. Board of aldermen to close such ways, or caution the public.
25. Abutters on ways laid out over private lands by owners; owners to grade same and build sidewalks. If owners neglect, the city may build and charge expense to owners. Such action not to be deemed an acceptance of said street.
26. No street to be laid out less than thirty feet wide, except, &c.
27. Paving of streets and width of sidewalks, how regulated. Walk to be one sixth of width of street; curb-stones and gutters. Walks on squares, &c., to be regulated by board of aldermen.
28. City council may regulate the width and height of sidewalks. May authorize the acceptance of sidewalks.
29. Owners to pave walk at their own expense when ordered. No wood to be used. Surveyors of highways may build them if owners refuse, and charge the expense to owners.
30. Canopies, platforms, and cellar doors not to extend into any street more than one tenth part of the width of the street. Cellar doors, how to be constructed; penalty.
31. Posts not to be set except at corners. Trees not to be planted without leave. Porticos, bow-windows, &c., not to extend more than one foot. Signs and goods not to be so hung as to extend more than one foot from building; penalty.
32. Goods not to be placed in the street. Surveyors may cause goods, &c., to be removed at expense of owner. Boxes, barrels, &c., not to be placed in the street; penalty.
33. How fines shall be distributed.
34. No merchandise, &c., shall be raised from any street, wharf, &c., into second story of any building, except at times and places, &c., permitted by board of aldermen; penalty; proviso.
35. Board of aldermen are surveyors of highways.
36. Streets may be macadamized.
37. Right of gas company to sink pipes, &c., under the control of the board of aldermen.
38. Mayor and aldermen authorized to lay out street in continuation of Broad and Commercial Streets.
39. Continuation of Front Street.
40. Compensation for land, &c.
41. Continuation of Clinton Street.
42. Continuation of Charles Street.
43. Streets on the Back Bay.
44. Streets and drainage on the Back Bay.

## ORDINANCE.

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| <ol style="list-style-type: none"> <li>1. Streets to retain their names till altered, &amp;c.</li> <li>2. Superintendent to be chosen; removal and vacancy.</li> <li>3. Superintendent to give bonds.</li> <li>4. Assistant may be appointed.</li> <li>5. Superintendent to attend at his office; to keep records and make reports.</li> <li>6. His general duties under direction of the board of aldermen. City not responsible for his doings, except, &amp;c.</li> <li>7. Superintendent to make bills for debts due, and deliver them to the treasurer. How to be collected.</li> <li>8. Pay-rolls, how made, audited, and paid.</li> <li>9. Streets not to be dug up, or ground removed without license.</li> <li>10. Streets dug up by license to be repaired.</li> <li>11. Where drain or aqueduct, &amp;c., is opened, fence and light to be put up.</li> <li>12. Persons intending to build or repair, to give notice to board of aldermen. Aldermen may grant leave to use portion of street on conditions. Rubbish may be removed by superintendent, if not done by owner of building.</li> <li>13. Coal and firewood in the streets, regulations respecting.</li> <li>14. Foot-ball, throwing stones and snowballs prohibited.</li> <li>15. Shooting with bow and arrow prohibited.</li> <li>16. Gambling tables, &amp;c., and gambling prohibited in any street, on the common, or public squares.</li> <li>17. Coursing or coasting on sleds in the streets prohibited.</li> <li>18. Bathing in waters surrounding the city prohibited.</li> <li>19. Street dirt or manure not to be</li> </ol> | <ol style="list-style-type: none"> <li>taken from streets without license.</li> <li>20. Buildings not to be placed on or removed through streets without license; penalty.</li> <li>21. Goods not to be suspended over any street.</li> <li>22. Awnings not to be maintained on buildings except under certain regulations.</li> <li>23. Signs, lanterns, &amp;c., not to project into any street more than one foot. Penalty, if not removed.</li> <li>24. Signs, lanterns, &amp;c., the lowest part less than nine feet above sidewalk, not to project more than six inches. Penalty, if not removed.</li> <li>25. Ringing of bells and blowing of horns prohibited.</li> <li>26. Stands for sale of goods, grinding of cutlery, &amp;c., not permitted unless licensed.</li> <li>27. Porches, doors, windows, steps, &amp;c., not to project into any street. Penalty.</li> <li>28. Gratings, how constructed, and of what width.</li> <li>29. Cellar doors, door-ways, and steps not to be constructed or maintained without license from board of aldermen.</li> <li>30. Not to be left open unless protected, lighted, &amp;c.</li> <li>31. Steps descending from the street to be enclosed and lighted.</li> <li>32. Excavations, apertures, &amp;c., in streets not to be made without license from aldermen. Application for license, how made. Terms and tenure of license.</li> <li>33. Inner face wall of grating to be eighteen inches from curb-stone.</li> <li>34. Coverings of coal-holes, excavations, and apertures, how to be constructed; may be removed if unsafe; and how.</li> <li>35. Coal-holes, apertures, and grat-</li> </ol> |
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ings may be constructed by leave of board of aldermen.

36. Signs in sidewalks prohibited unless licensed.
37. Safe passage to be provided around or over apertures by persons licensed. Persons licensed liable for injuries. License to be exhibited to police, &c.
38. Vacant lots on accepted streets to be fenced.
39. Feeding horses, &c., in streets prohibited.
40. Riding or driving faster than six miles per hour forbidden.
41. Horses, kine, or other animals not to go at large.
42. Streets, lanes, courts, commons, public squares, &c., not to be watered without license.
43. License to water streets not to run more than one year, &c.

#### SIDEWALKS.

44. Surveyors of highways (board of aldermen) to regulate the height and width of sidewalks. May accept sidewalks.
45. After acceptance, to be maintained by the city. Proviso concerning certain repairs.
46. City clerk to keep record of names of streets and acceptance of sidewalks.
47. Carriages, handcarts, &c., forbidden on sidewalks, except children's carriages. Horses not permitted on sidewalks, &c.
48. Sawing wood, &c., on sidewalks forbidden.
49. Persons not to obstruct sidewalks, &c., by standing in groups. Penalty for so doing.
50. Lumber, bales, or other articles not to be placed on sidewalks. Penalties for so doing. Proviso.
51. Snow to be removed from sidewalks. Penalty for not removing.
52. Same subject.

53. Sidewalks encumbered with ice to be made safe by occupant or owners. Penalty for neglect.
54. Snow or ice thrown into the streets to be broken up and spread. Penalty for neglect.
55. Meaning of the word "street" defined.
56. Who liable for penalties.
57. Acts forbidden to be done without license may be licensed.
58. Rights and duties of surveyors of highways not limited by this ordinance.
59. Penalties.

#### RULES AND REGULATIONS.

1. The superintendent of streets may issue permits for excavations, &c. How coal-holes, &c., shall be constructed, and of what materials, &c. Depth of coal-holes and vaults; coverings; coal slides permitted, and how constructed.
2. Owners, &c., responsible for any damage in consequence of any defect in construction of or for being out of repair.
3. Occupant liable for damages occasioned by aperture being left insecure, &c.
4. No boiler, steam-shaft, furnace, &c., to be located for use, or oil or any explosive substance stored under sidewalks; excavations not to be ventilated into any street.
5. All excavations to be filled up by owner after one week's notice.
6. When any coal-hole, vault, &c., shall be unsafe, &c., the board of aldermen may order same to be removed, &c.; if not removed by owner, the city may remove it, and charge expense to owner; excavations not to be left open, except, &c.
7. Applications for permits, how made; excavations not to be used

for any other purpose than that for which granted, except, &c.; applicants shall agree to perform all the conditions required.

8. The chief of police shall prosecute all persons who disturb any sidewalk without a permit.

## STATUTES.

1. Under a provision in the Act of seventeen hundred and ninety-nine, chapter thirty-one, the selectmen, (whose powers were afterwards transferred to the board of aldermen by the revised city charter,) were empowered, whenever in their opinion the safety and convenience of the inhabitants of Boston should require it, to lay out or widen any street, lane, or alley of Boston; and for that purpose to remove any building or buildings of what nature soever. And it was further provided, that the owner or owners of such building should be entitled to receive compensation for the damages which he or they might sustain by such removal, which damages should be ascertained, determined, and recovered in the way and manner pointed out in the act entitled "An act directing the method of laying out highways." That act provided for an estimation of such damages by a committee of freeholders, appointed by the court of general sessions of the peace; with a privilege to any party aggrieved of applying to the court for a hearing before a jury, or new committee. By an additional act, passed March four, eighteen hundred and five, the selectmen were in like manner empowered to lay out any new street, or to widen any street, lane, or alley, and for that purpose to take any land that might be required for the same, and to remove any building or buildings of what nature soever; and that the same street, lane, and alley being recorded in the town's books, should be thereby established as such; and that the owner or owners of the land or buildings that should be so taken or removed, should receive such recompense for the damages sustained, as the party interested and the selectmen should agree upon, to be paid by the town, or the individual person or persons for whose use such street, lane, or alley should be laid out or widened, or as should be ordered by the justices of the court of general sessions of the peace, upon an inquiry into the same by a jury to be

Laying out and widening streets.

1799, 31, § 3.

1821, 110, § 13.

1854, 448, § 33.

Compensation for buildings removed.

1786, 67, repealed by Revised Statutes.

1804, 73.

Compensation for land taken, &c.

11 Mass. 447.

summoned for that purpose, who should be drawn out of the jury box of the supreme judicial court of the town of Boston by the selectmen of said town, upon the application of the sheriff of the county of Suffolk, and if, by accident or challenge, there should happen not to be a full jury, said officer was to fill the panel *de tulibus circumstantibus*; or by a special committee, if the parties should agree thereto.<sup>1</sup>

Discontinuance  
of streets, &c.  
1816, 90, § 1.  
1821, 110, § 13.  
1834, 448, § 33.  
7 Cush. 254.

2. By an act passed December thirteen, eighteen hundred and sixteen, the selectmen were, and in consequence by the revised city charter, the board of aldermen are also empowered, whenever in their opinion the safety or convenience of the inhabitants of the said city shall require it, to discontinue any street, lane, or alley of the said city, or to make any alteration in the same, in part or in whole; reserving however, in all cases, to individuals who may sustain damage thereby, recompense for the same, to be ascertained and allowed in the same manner as is provided in the preceding act.

1804, 73.

Previous or-  
ders, &c., of  
selectmen con-  
firmed.  
1816, 90, § 2.

3. All orders, votes, and determinations of the said selectmen of the town of Boston, had and passed, previous to the act of eighteen hundred and sixteen, for the discontinuance of any street, lane, or alley of said town, or respecting any alteration in the same, in whole or in part, shall be held and considered as good and valid to all intents and purposes, as if the said act of seventeen hundred and ninety-nine, chapter thirty-one, had explicitly vested said authority in the said selectmen; reserving always to individuals recompense for damages<sup>2</sup> sustained thereby, as is provided in the said act.

<sup>1</sup> The court of general sessions of the peace has since been abolished, and its general functions have been transferred to the superior court. (See Stat. 1782, c. 14; 1803, c. 154; 1807, cc. 11, 57; 1809, c. 18; 1811, cc. 81, 93; 1813, c. 197; 1818, c. 120; 1819, c. 139; 1820, c. 79; 1821, cc. 51, 109; Rev. Stats. c. 82; Stat. 1855, c. 449; 1859, c. 196; Gen. Stats. c. 114. The provisions for the recovery of damages have been modified by subsequent statutes, as stated in succeeding sections. See §§ 5-19, *post.* pp. 689-696.

<sup>2</sup> The discontinuance of a part of a street in a city whereby the value of lands abutting on other parts of the street or other streets, is lessened, is not a ground of action against the city by the owner of such lands, if still accessible by other public streets. *Smith v. City of Boston*, 7 Cush. 254.

4. The selectmen were, and the board of aldermen are required to keep a record of all the streets, lanes, and alleys, and of all votes and proceedings relative to the same; and copies thereof, certified by the clerk, shall be valid to all intents and purposes.

Record of streets.  
1816, 90, § 3.  
1821, 110, § 13.  
1854, 448, § 33.

5. By the forty-third chapter of the General Statutes, the authority to lay out, alter, and discontinue highways, and to assess damages therefor, is given to the county commissioners; with the right to any party aggrieved to apply for a jury; and the method of proceeding is prescribed in detail. The special provisions of the General Statutes for ways in the county of Suffolk, are contained in the four sections next following:<sup>1</sup>

County commissioners authorized to lay out, &c., highways.  
G. S. 43.

<sup>1</sup> Whether the authority of the board of aldermen to lay out and widen streets depends upon the Gen. Stats. c. 43, §§ 77-79, or upon Stat. 1799, c. 31, § 3, Stat. 1804, c. 73, and Stat. 1821, c. 110, § 13, Stat. 1854, c. 448, § 33 (City Charter), appears to be an open question. The practice has been to proceed upon the latter statutes. Upon this point see *Stone v. City of Boston*, 2 Met. 220; *Parks v. City of Boston*, 8 Pick. 218; *Commonwealth v. City of Boston*, 16 Pick. 442; *Goddard's case*, 16 Pick. 504; *Bowman v. City of Boston*, 5 Cush. 1.

The mayor and aldermen cannot legally lay out a street, without first giving to all persons interested notice of their intention so to do. *Stone v. City of Boston*, 2 Met. 220.

Where the mayor and aldermen laid out a street over land belonging to minors without giving any previous notice, and without making any estimate of the amount of damage thereby sustained by the owners, and more than a year elapsed before either of the owners came of age; a writ of *certiorari* was ordered on a petition filed by one of the owners, at the first term after he came of age, although notice had been given to the tenant in possession to remove the buildings from the land, and he had communicated that notice to the guardian of said minors, within a year after the street was thus laid out. *Ibid.* See also *Parks v. City of Boston*, 8 Pick. 218.

Where the mayor and aldermen shall adjudge that the laying out or altering of a street is required by public safety and convenience, their having taken a bond from an individual to contribute towards the expense will not vitiate their proceedings, provided the bond was not made the basis of their proceedings, and the adjudication was not colorably for the use of the city, and really for the benefit of the individual. *Ibid.* See also *Crockett v. City of Boston*, 5 Cush. 182.

Where parties, interested in the alteration of a street or highway, had actual notice of the proceedings, and attended, and were heard concerning them, and have acquiesced therein for many years, a writ of *certiorari* to remove those

Powers of  
board of alder-  
men of Boston,  
G. S. 43, § 77.

6. The board of aldermen of the city of Boston shall within said city have similar powers and perform like duties as are exercised and performed by the commissioners of counties in respect to the laying out, altering, and discontinuing of ways, and ordering specific repairs thereon; and shall assess damages therefor, and award indemnity for damages sustained by reason of such laying out, alteration, discontinuance, or order for spe-

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proceedings will not be granted, merely because it does not appear that they had the official notice prescribed by law, nor because one of them was *non compos mentis*, and had no guardian. *Hancock v. City of Boston*, 1 Met. 122.

Where part of a lot of land under lease is taken by the mayor and aldermen for the purpose of widening a street, the lease is not thereby extinguished; nor is the lessee discharged from his liability to pay the reserved rent during the residue of the term. But the lessor and lessee are each entitled to recover compensation for the damage so sustained by them respectively. *Parks v. City of Boston*, 15 Pick. 198.

Where land is taken by the mayor and aldermen for the purpose of widening a street, it is to be estimated at its value at the time of the taking, in the assessment of damages. *Ibid.*

Where a jury impanelled in the court of common pleas to assess the damages sustained by the owner of such land, under Stat. 1821, c. 109, § 8, by which the jurisdiction of the court of sessions in the county of Suffolk in such case is transferred to that court, have viewed the land, the jurors may exercise their own judgment and knowledge of like subjects, in estimating the damages; but *it seems*, that if a juror has knowledge of any fact, bearing upon the case, he must disclose and testify to it, in court. *Ibid.*

Under Stat. 1820, c. 79, § 5, a bill of exceptions lies to the instructions and rulings of the court upon such trial. *Ibid.*

Where the lessee of a store in Boston was prohibited, under certain penalties, by the terms of the lease, from making any alterations in the store without the consent of the lessor, and subsequently to the execution of the lease, the street was widened by the city authorities, it was *held*, that the city was not responsible to the lessee, for any damage occasioned by a delay on the part of the lessor to give his consent to the alterations rendered necessary by the widening of the street. *Brooks v. City of Boston*, 19 Pick. 174.

In an action for damages brought, in such case, by the lessee against the city, evidence that his sales were less during the time when the street, as widened, was being fitted for use, than in the corresponding season of the next year, after the alteration had been completed, is not admissible, unless it is connected with other evidence tending to show that the diminution of business was in fact occasioned by operation of widening the street. *Ibid.*

A city or town is not responsible in damages for the inconvenience and loss of business occasioned to the abutters on a street, by incumbrances and

cific repairs, in like cases and in the same manner as commis- G. S. 43, § 77.  
sioners are required to perform similar duties.

7. Applications for laying out, altering, or discontinuing a way in said city, may be made, and notice given, and proceed- Applications for laying out, &c., ways, how made. Ibid. § 78.  
ings had thereon, in such manner and under such regulations as shall be prescribed by any ordinance of the city for that purpose.

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obstructions placed in the street for the purpose of repairing it, or by opening a common sewer in the street. *Brooks v. City of Boston*, 19 Pick. 174.

The complainant took a lease of a store in the city of Boston for three years, covenanting to pay the rent and to leave the premises in good repair at the end of the term, and the lessor reserving a right to enter and make improvements. The front part of the land was taken, and the front wall of the building was cut off by the city, for the purpose of widening the street. It was *held*, that this act of the city did not put an end to the term, nor release the lessee from his covenants to pay rent and make repairs. *Patterson v. City of Boston*, 20 Pick. 159.

Whether the erection of a new wall on the new line fixed for the street, was in the nature of a reparation which the lessee's covenant bound him to make, or whether it was not rather an addition or improvement, *quære*. *Ibid*.

But the lessee, in the first instance, and if he decline, the lessor, had a right to build such wall, and the expense of it is a proper item of claim for damages against the city. *Ibid*.

Whether the lessee has built such wall himself, or paid the lessor for building it, does not affect his claim for damages against the city, unless the lessor built it on his own account, and received remuneration from the city; in which case he was not entitled to recover the amount from the lessee, and the city is not to be charged a second time for the same damage. *Ibid*.

The damage sustained by the lessee in being deprived of the use of his store, and for which he is entitled to recover of the city, is to be computed for such time as would be reasonably necessary to remove his goods and make the repairs and remove back again; and the loss or the value of the store to him for that period, and not the rent and taxes specifically, is the measure of his indemnity. *Ibid*.

The lessee is also to be remunerated for the diminished value of the premises caused by the taking of part, for the residue of the term, he continuing to pay at the same rate the rent and taxes. *Ibid*.

It *seems* he is not entitled to damages for loss of custom, occasioned by his being obliged to occupy a less advantageous place of business while the repairs are making. *Ibid*.

In estimating the damages sustained by an individual by reason of his land being taken for public use, the jury may rightfully be influenced by their general knowledge and experience of like subjects as well as by the testimony and opinion of the witnesses. *Ibid*.

Parties may apply for jury to superior court. View to be granted. G. S. 43, § 79. 20 Pick. 201. 8 Cush. 546.

8. A party aggrieved by the doings of the board of aldermen in the cases mentioned in the preceding sections, may apply for a jury by petition to the superior court, at any term thereof which shall be holden within one year after the passage of the order or proceeding upon which the application is founded, or if the application be for the assessment of damages or indemnity merely, then within one year after the final determination of any suit wherein the legal effect of the proceedings of the board of aldermen is drawn in question; and thereupon said court shall, after due notice to the city, order a trial by jury to be had at the bar of the court in the same manner in which other civil causes are there tried by the jury, and if either party request it, the jury shall view the place in question.

Commissioners 9. The county commissioners in Middlesex, shall have and

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Soon after the commencement of a lease for three years of a warehouse or store in Boston, in which lease the lessee covenanted to pay the rent during the term, and to leave the premises in good repair, the city took the front part of the land, on which the building stood, and cut down the front wall, for the purpose of widening the street. The building remained in this condition about two years, when the lessor took it down, and erected a new store on the same site, but diminished by the strip of land taken by the city. Before the wall was taken down, the lessee removed into another store, and remained there until the new one was erected, when he removed back to the new one. In a complaint by the lessee against the city for damages, it was *held* that the plaintiff was entitled to recover the expenses of removing his goods from and back to his original place of business, and for the loss of earnings for the few days occupied in such removals, and a reasonable sum for the rent of another store for so long a time as would reasonably have been required for putting up a new front wall; or if he had suspended his business, that he might have recovered for the loss of earnings during a reasonable time for rebuilding the wall; that he had a right forthwith to rebuild the wall, carrying it up to the roof, and if he had done so, inasmuch as he could not have compelled a contribution from the lessor, he would have been entitled to recover the whole cost from the city; but that, as in fact he did not put up the wall, but left the lessor to make his full claim of damages on the city, he could recover only such proportion of the estimated expense, as his interest, regard being had to the portion of the store occupied by him and the time which his lease had to run, bore to the value of the whole estate. *Patterson v. City of Boston*, 23 Pick. 425.

For provisions respecting the recovery of damages for the raising or lowering of highways, see Gen. Stats. c. 44, §§ 19, 20. See also *Brown v. Lowell*, 8 Met. 172.

exercise the same powers and duties in the city of Chelsea and in the towns of North Chelsea and Winthrop in the county of Suffolk, in relation to highways and other ways, as they have and exercise in the several towns in the county of Middlesex, except so far as may be otherwise provided in the charter of the city of Chelsea; and similar proceedings may be had for the assessment and award of damages and indemnity. But in case a jury is applied for or committee agreed upon in any matter relating to a way, the warrant therefor shall be directed to the sheriff or his deputy, or to a coroner, of the county of Suffolk, and the proceedings thereon shall be the same as are had upon such warrants in other counties. The verdict of such jury as well as the report of such committee shall be returned to the superior court.

of Middlesex,  
powers of, in  
Suffolk. War-  
rant for jury, to  
whom directed.  
Return of ver-  
dict, &c.  
G. S. 43, § 89.

10. Whenever the board of aldermen of the city of Boston shall adjudge that the public safety and convenience require that any street, lane, or alley in the said city shall be laid out, altered, or discontinued, they shall make and record an estimate of the expense thereof, and if such estimate shall exceed the sum of five thousand dollars, or if such estimate, with the estimates of any previous alteration or discontinuance of any part of such street, lane, or alley during the municipal year, shall exceed the sum of five thousand dollars, the order for such laying out, alteration, or discontinuance, together with an estimate of the expense thereof, shall be sent to the common council for its concurrence or rejection; and such order shall not take effect or be in force until the common council shall concur therein.

Special provis-  
ions for laying  
out, &c., streets  
in Boston.  
1852, c. 266, § 3.  
Charter, § 33.

11. In estimating the damage sustained by laying out, locating anew, altering, or discontinuing, a highway, or by an order for specific repairs, regard shall be had to all the damages done to the party, whether by taking his property or injuring it in any manner; and there shall be allowed, by way of set-off, the benefit, if any, to the property of the party by reason thereof.

Damages, how  
estimated.  
Set-off.  
G. S. 43, § 16.  
2 Mass. 267.  
5 Met. 372.  
2 Gray, 467.  
4 Gray, 537.

12. When persons having a claim for damages sustained in their property by the laying out, alteration, or discontinuance of a highway, have different or separate interests in the property,

When claimants  
have different  
interests, entire  
damages or in-  
demnity to be

paid to a trustee.  
G. S. 43, § 17.

so that an estate for life, or for a term of years in the same belongs to one person, and the remainder or reversion in fee belongs to another, entire damages, or an entire sum as indemnity shall be assessed in the same manner as is provided in other cases, without any apportionment thereof; and the amount of such damages or indemnity shall be paid over to or be recoverable by any person whom the parties owning the several interests may appoint, to be invested by him, when paid over or recovered, in bond, mortgage, or other good securities, and held in trust for the benefit of the parties according to their several interests; the annual income to be paid over to the person in whom was the estate for life or term of years, for the period such estate might have continued, and the remainder after the termination of such estate to be paid over absolutely to the person that was entitled to the reversion in fee, or to his heirs or devisees.

Trustee in certain cases to be appointed by judge of probate, &c.  
Ibid. § 18.

13. If any of the persons having an interest in such property shall, by reason of legal disability, be incapacitated from choosing a trustee, or if the parties in interest cannot agree upon a choice, the probate court of the county in which the property is situated, upon application, shall appoint some suitable person as trustee. Said trustee shall before entering upon the duties of his trust give a bond to the judge of probate and insolvency, with sufficient surety or sureties, in such penal sum as the judge directs, conditioned for the faithful performance of his duties as trustee under the provisions of this and the preceding section; which bond upon breach of its condition may be put in suit by order of the probate court for the use and benefit of the persons interested in the trust property, in like manner as is provided in case of bonds given by executors or administrators.

Several parties may go to the same jury.  
Ibid. § 53.  
5 Met. 372.  
3 Cush. 81.  
7 Cush. 533.  
10 Cush. 385.

14. When there shall be several parties, having several estates at the same time, in land or buildings, other than and different from the estates and interests for which provision is made in section twelve, and the land or buildings are taken or otherwise damaged, in whole or in part, by the laying out, locating anew, altering, or discontinuing, of a highway or making specific repairs thereon, and one of such parties, by petition

as provided in this chapter, applies for a jury to ascertain his damages in the premises, all the other parties so interested may become parties to the proceedings under such petition, and the damages of all of them may be determined by the same jury, in the manner provided in the five following sections.

15. Upon such application of a party thus interested, the commissioners shall order the petitioner to give notice thereof to all the other parties interested, by serving each of them, fourteen days at least before their next regular meeting, with an attested copy of such petition and the order thereon, that the other parties may if they see cause appear at the next meeting and become parties to the proceedings under the petition; and at the next meeting a jury shall be ordered as before provided in this chapter, who shall, under the direction of the person presiding at the trial, proceed to hear all the persons who have become parties to the proceedings.

Notice to persons interested to become parties.  
Ibid. § 54.

16. If on such hearing the jury find any of the parties entitled to damages, they shall assess the same in the following manner to wit: they shall first find and set forth in their verdict the total amount of the damages sustained by the owners of such land and buildings, estimating the same as an entire estate, and as if the same were the sole property of one owner in fee-simple; and they shall then apportion the total amount of damages among the several parties whom they find to be entitled, in proportion to their several interests and claims and to the damages sustained by them respectively, and set forth such apportionment in their verdict; and if they find any one or more of said parties not to have sustained damage, they shall set forth in their verdict that they award no damages to such party.

Verdict to apportion damages.  
Ibid. § 55.

17. The verdict, if accepted, shall be conclusive upon all parties interested who shall either have had notice as aforesaid, or by consent have become parties to the proceedings.

Verdict is conclusive on all who have notice, &c.  
Ibid. § 56.

18. Each party recovering damages shall recover his several costs; and each party not recovering damages shall be liable for costs to the town or other corporation of which he shall have claimed damages, in like manner as if the proceedings were had under his several petition; but if a party shall fourteen days be-

Costs of parties, how taxed.  
Ibid. § 57.

G. S. 43, § 57. fore the trial give notice in writing to the town or other corporation that may be liable for damages, that he relinquishes all claim for damages, and shall also before the trial file in the case a relinquishment of such claim, he shall not be liable for costs in the case.

Party neglecting to appear, to be barred. Ibid. § 58.

19. If a person, having notice as aforesaid, neglects to appear and become a party to the proceedings in court, he shall be forever barred from making an application for damages.

Laying out, &c., of way to be void as against owner of land, unless, &c. 1862, 203.

20. The laying out or alteration of any highway, town way, or private way, shall be void as against the owner of any land over which the same shall be located, unless within a reasonable time, not exceeding two years, after the same shall have been laid out or altered, possession shall be taken of such land for the purpose of constructing such highway, town way, or private way, or the damages awarded the owner of the land shall be paid or tendered. This does not apply to any such way located before April thirty, eighteen hundred and sixty-two, until sixty days after the expiration of the time within which such way was ordered in such location to be constructed.

1863, 108.

Board of aldermen to mark termini and angles of ways. Penalty for neglect. G. S. 43, § 88. 7 Gray, 465.

21. The county commissioners, mayor and aldermen, and selectmen, shall cause permanent stone bounds not less than three feet long, two feet of which at least shall be inserted in the earth, to be erected at the termini and angles of all roads laid out by them, when practicable; and when not so, a heap of stones, a living tree, a permanent rock, or the corner of an edifice, may be a substitute for such stones; or said bounds may be permanent stone bounds not less than three feet long, with holes drilled therein, and filled with lead, placed a few inches below the travelled part of the street or way, as the officer whose duty it is to cause the same to be erected may determine. And if they neglect to establish such monuments after being notified so to do by an owner of land through which any such way is laid out, (since the twenty-fifth of April, eighteen hundred and forty-eight,) the county, if it be a county road, and the city or town, if it be a city or town road, shall pay to the owner of the land the sum of fifty dollars for each month that such neglect continues, to be recovered in an action of tort.

G. S. 43, § 87.

22. When ten or more freeholders represent to the mayor and aldermen of a city or selectmen of a town, that the exact location of a street, road, or way, over which they have jurisdiction, cannot readily be ascertained, they shall make investigation thereof, and if it appears that the representation is correct, shall, after giving the notice required in laying out a similar road or way, proceed to ascertain the correct location, erect the necessary bounds, and file a certificate thereof, for record.

If location of street is uncertain, board of aldermen to ascertain, &c. G. S. 43, § 87. See also G. S. 43, § 74.

23. No way opened and dedicated to the public use, which has not become a public way, shall be chargeable upon a city or town as a highway or townway, unless the same is laid out and established by such city or town in the manner prescribed by the statutes of the commonwealth.

Ways not chargeable unless, &c. G. S. 43, § 82. 4 Cush. 332. 5 Gray, 73. 7 Gray, 343.

24. The mayor and aldermen and selectmen shall, whenever the public safety demands it, direct and cause the entrances of such ways entering on and uniting with an existing public highway, to be closed up; or may by other sufficient means caution the public against entering upon such ways; and if any such way shall not be closed, or sufficient notice given that the same is dangerous, the city or town shall be liable for damages arising from defects therein in the same manner as if it had been duly laid out and established.

Board of aldermen to close such ways, or caution the public, &c. G. S. 43, § 83.

25. When any street or way, which now is, or hereafter shall be opened in the city of Boston, over any private land, by the owners thereof, and dedicated to, or permitted to be used by, the public, before such street shall have been accepted and laid out according to law, it shall be the duty of the owners of the lots abutting thereon, to grade such street or way, and to construct convenient sidewalks on each side of such street or way, at their own expense, in such manner as the safety and convenience of the public shall, in the opinion of the board of aldermen of said city, require; and if the owners of such abutting lots shall, after reasonable notice given by the said board of aldermen, neglect or refuse to grade such street or way, or to construct said sidewalks in such street or way, in manner aforesaid, it shall be lawful for the said mayor and aldermen to cause the same to be graded and constructed as aforesaid, and

Abutters on ways laid out over private land, by the owners, to grade streets and construct sidewalks. 1845, 236, § 1. 1849, 133. Charter, § 83.

1845, 236, § 1. the expense thereof shall, after due notice to the parties interested, be equitably assessed upon the owners of such abutting lots, by the said board of aldermen, in such proportions as they shall adjudge reasonable; and all assessments so made shall be a lien upon such abutting lands, in like manner as taxes are now a lien upon real estate; *provided, always*, that nothing contained in this act shall be construed to affect any agreements heretofore made respecting any such streets or ways as aforesaid, between such owners and said city; *provided, also*, that any such grading of any street or way, or constructing of sidewalks in any street or way, by the board of aldermen as aforesaid, shall not be construed to be an acceptance of such street or way by the city of Boston.<sup>1</sup>

No street to be opened less than thirty feet wide, except, &c.  
Ibid.

26. No street or way shall hereafter be opened as aforesaid in said city, of a less width than thirty feet, except with the consent of said board of aldermen, in writing, first had and obtained for that purpose.

Paving of streets and sidewalks.  
1799, 31, § 1.

27. By the Act of seventeen hundred and ninety-nine, chapter thirty-one, section one, it was provided that all streets in Boston should be paved agreeably to the following regulations, viz: The foot-path or walk on each side of every street, shall be of the breadth of one sixth part of the width of the whole street, and shall be laid or paved with bricks or flat stones, and secured with a beam or cut stone along the outside thereof; and the middle or remaining four sixths of every street, shall remain as a passageway for carriages of burden or pleasure; and shall have a gutter on each side thereof, or otherwise, as the surveyors of highways in the said town shall determine; and shall be paved with good and sufficient paving-stones; *provided, always*, that if in any street so to be paved, the sides shall not exactly range, the gutter or outside of the foot-walk shall be laid out as nearly in a straight line as the street will admit of; and in all squares, and other large open spaces, and in all streets

Squares, &c.

<sup>1</sup> The Acts of 1845, c. 236, and 1849, c. 133, were to take effect within thirty days of their passage, unless the city council should within that time vote not to accept the same. No such vote appears to have been passed.

the breadth of which shall not conform to this law, the breadth of the foot-walk, and the ascent and descent, and the crowning of the pavement in every street, shall be regulated by the surveyors of highways.

28. The provisions of the preceding section were essentially modified by the Act of eighteen hundred and thirty-three, chapter one hundred and twenty-eight, which provides, that the city council of the city of Boston may, from time to time, by any ordinance or ordinances, empower the surveyors of highways of said city so as to regulate the width and height of the sidewalks of any public squares, places, streets, lanes, or alleys in said city, as shall, in the judgment of said surveyors, be most conducive to the convenience and interest of said city, any law of the commonwealth to the contrary notwithstanding; and may also empower said surveyors to accept such sidewalks, after the same shall be put in good and perfect repair by the abutters on said squares, places, streets, lanes, and alleys, and after the same shall have been relinquished in writing to the said city by such abutters; and may also order, that, after such relinquishment, such sidewalks may be maintained at the expense of said city.<sup>1</sup>

Regulation of width and height of sidewalks, and acceptance thereof.  
1833, 128.  
5 Cush. 1.  
6 Cush. 524.

29. Where the cartway in any public street shall be ordered to be paved, every owner of the lot or lots of ground upon said street shall, without delay, at his own cost, cause the foot-way in front of his ground to be paved with bricks or flat stones, and kept in repair; and in paving or repairing the pavement of any street, no person shall place timber or wood in front of his or her house or lot, to support the foot-walk, but the same shall be supported with hammered or cut stone; the same to be done under the direction of, and to the approbation of, the surveyors of highways; and if the owner or owners of such lots shall neglect to pave with brick or flat stones, and to support the foot-way, for the space of twenty days after he, or the tenant of such lot, or the attorney of the said owner or owners, shall have been thereto required by any of the survey-

Owner to pave the sidewalk at his own expense.  
1799, 31, § 2.  
Materials therefor.  
1809, 28, § 1.

<sup>1</sup> See the Ordinance of the city in relation to streets, § 44, p. 716, *post*.

1790, 31, § 2.

Individuals  
may object to  
paving, &c.  
Ibid.

ors of highways, then it shall be lawful for the said surveyors of highways, and they are enjoined and required, to pave the said foot-ways with brick or flat stones, and to support and to defend the same, and to repair the same; and shall recover the whole amount thereof by action of the case, to be brought by the surveyors of highways, before any court proper to try the same; *provided, nevertheless*, that in all cases where applications may be made for new paving of streets, any individuals who may be affected thereby, may make their objections to the mayor or aldermen, or surveyors of highways, who are directed to take them into consideration while deliberating on the expediency of said application, and to pave the same at the expense of said town, whenever they shall think it expedient.<sup>1</sup>

Canopy, balcony, platform,  
and cellar  
doors.  
Ibid. § 4.

30. No canopy, balcony, platform, or cellar door, or step in any street, lane, or alley in the city of Boston, shall project into such street, more than one tenth part of the width of the street, and in no case more than three feet; and all cellar doors hereafter to be made or repaired, shall be built with upright cheeks, and shall not project from the line of the house more than six inches; and if any proprietor or owner of any such canopy, balcony, platform, or cellar door, or steps, shall refuse or neglect to remove or take down the same within five days after notice and direction given him, or them, by the surveyors of highways, or any person empowered by them to that purpose, such owner or proprietor shall forfeit and pay the sum of

Penalty.  
Ibid.

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<sup>1</sup> This section originally contained a provision, "that where there are any vacant lots of land in any such streets, the surveyors of highways may, at their discretion, allow the owner or owners thereof to cover the foot-path with planks, which shall be removed, and the brick, or flat stone pavement, shall be completed, whenever it may become necessary in the judgment of said surveyors;" but this provision would appear to be repealed by Stat. 1809, c. 28, § 1, as incorporated in the section in the text. But see *Lowell v. French*, 6 Cush. 223.

It is the duty of cities and towns to keep that part of the street which lies between the carriage-way and the sidewalk, in such repair that foot passengers may cross any part thereof, with a reasonable degree of safety, using such care and caution as are adapted to the nature of the case; and establishing raised crossings at proper distances, is not a sufficient compliance with this duty. *Raymond v. City of Lowell*, 6 Cush. 524.

two dollars for each and every day the same shall remain after 1799, 31, § 4. the expiration of the said five days.

31. No post shall be erected or set in any of the streets of Posts.  
the said city of Boston, except at the corners or intersection of Ibid. § 5.  
two streets, and in such other places as the surveyors of high-  
ways may authorize and direct; and the said surveyors may  
remove the same. And no person shall plant any tree in any  
street of the said city of Boston, without leave first obtained Trees.  
from the surveyors of highways, who shall have power to re- Ibid.  
move the same; <sup>1</sup> and no person shall in future make, erect, or  
have any portico or porch, any bow-window, or other window, Porticoes,  
which shall project into the streets of the said city of Boston, porches, and  
more than one foot beyond the front of his or her house; or bow-windows.  
hang any sign, or any goods, wares, or merchandise, which Ibid.  
shall project into the street more than one foot beyond the front Projecting  
of his or her house or lot; and if any person shall hereafter signs.  
offend against this provision, every person so offending shall Ibid.  
forfeit and pay the sum of one dollar for each and every day Penalty.  
such portico or porch, bow-window, or other window, shall be Ibid.  
continued, after notice given to him by the surveyors of high-  
ways, or by any person by them authorized to that purpose.

32. If any person or persons shall continue to place in the Placing goods  
street, contrary to the meaning of this act, <sup>2</sup> any goods wares, or in the street.  
merchandise, it shall be lawful for the surveyors of highways Ibid. § 6.  
of the said city of Boston, or any person empowered by them,  
to remove such goods, wares, and merchandise, and to keep  
them in safe custody; and the proprietor or owner of such  
goods, wares, and merchandise shall not have the same goods  
restored until he or they shall have paid to the person or per-  
sons so removing them, all expenses of removing and storing  
them, and a reasonable compensation for the time so employed Boxes, barrels,  
in their removal, as well as the fine aforesaid; and if any per- &c.

<sup>1</sup> A portion of this section, in relation to carriages and wheelbarrows, was repealed by Statute, 1847, c. 124, § 3.

<sup>2</sup> The Act of 1799, c. 31, is referred to. Its provisions are given in §§ 27-32, inclusive, of the text.

1799, 31, § 6. son shall place or pile any empty boxes, barrels, hogsheads, or other conveniency capable of containing goods or merchandise, or that may have contained goods or merchandise, in any part of the streets of the said city of Boston, more than five minutes after notice given to remove the same, such person shall forfeit and pay the sum of two dollars for each and every such offence, to be recovered by action of debt, by the surveyors of highways, before any justice of the peace in the said county.<sup>1</sup>

Penalty.

1852, 312, § 1.

How fines shall be distributed.  
1799, 31, § 8.

33. All the forfeitures and fines which may be recovered in pursuance of the five preceding sections, shall go and be distributed, one moiety thereof to the poor of the city of Boston, and the other moiety to the surveyors of highways.<sup>2</sup>

Articles shall not be raised for the purposes of storage, from any street, &c., into second story, &c., except, &c.  
1816, 90, § 4.  
1821, 110, §§ 1, 13.

34. No person shall raise up from any street, wharf, or place of public resort, within the city of Boston, for the purpose of storing the same, any cask, bale of goods, or other articles of merchandise, into the second or any higher story of any house, store, or other building, upon or adjoining the same, and on the outside of such buildings; and no person shall deliver, from the second or any higher story of any house, store, or other building, on the outside of the same, which shall adjoin upon any street, wharf, or place of public resort within the said city of Boston, any cask, bale of goods, or other article of merchandise, except at such times and places, and under such restrictions and limitations as the mayor and aldermen for the time being shall, by writing, authorize and direct. And every person who shall offend in manner aforesaid, shall forfeit and pay to the commonwealth, for each and every such offence, a sum not exceeding one hundred dollars, nor less than ten dollars, to be recovered by indictment in the superior court, with costs of prosecution; *provided*, that this shall not be construed to extend to the raising any materials or other articles which may be necessary in erecting, repairing, or taking down any building

<sup>1</sup> By Gen. Stats. c. 116, § 41, it is provided, that the police court of the city of Boston shall have the same jurisdiction as justices of the peace in all civil actions and proceedings.

<sup>2</sup> The 7th section of Stat. 1799, c. 31, was repealed by Stat. 1847, c. 224, § 3.

within the said city of Boston, or for the convenience thereof, 1816, 90, § 4.  
 or for removing any merchandise, or other article in case of dan- 1821, 110, § 1, 13.  
 ger by fire, or other inevitable casualty.

35. The board of aldermen shall be surveyors of highways Surveyors of highways.  
 for said city.<sup>1</sup> Charter, § 41.

35. The surveyors of highways of the city of Boston, when- Streets may be macadamized, and same provisions shall apply.  
 ever they shall judge it expedient, may order any street of said 1831, 17.  
 city to be macadamized; and the several provisions of an act  
 entitled, “An act to regulate the paving of streets in the town  
 of Boston, and for removing obstructions in the same,” passed  
 on the twenty-second day of June, in the year of our Lord one  
 thousand seven hundred and ninety-nine, and of the several acts  
 in addition thereto, shall be deemed and taken to apply to  
 streets ordered to be macadamized, as well as to streets ordered  
 to be paved in said city, and the macadamizing of any of said  
 streets shall, to all intents and purposes of said several acts, be  
 deemed equivalent to the paving of the same, and shall create  
 the same liabilities in all respects, under the said several acts, as  
 would be created under them by the paving of such streets.

37. The Boston Gas Light Company, with the consent of Right of gas company to sink pipes, &c. under the control of the board of aldermen.  
 the mayor and aldermen, shall have power and authority to 1822, 41, § 3.  
 open the ground in any part of the streets, lanes, and highways  
 in the city, for the purpose of sinking and repairing such pipes  
 and conductors as it may be necessary to sink for the purpose  
 expressed in the act incorporating said company. And the  
 said corporation, after opening the ground in the said streets,  
 lanes, or highways, shall be held to put the same again in re-  
 pair, under the penalty of being prosecuted for a nuisance;  
*provided*, that the said mayor and aldermen for the time being,  
 shall at all times have the power to regulate, restrict, and con-  
 trol the acts and doings of said corporation, which may, in any  
 manner, affect the health, safety, or convenience of the inhab-  
 itants of said city.

38. By an act passed March twenty-six, eighteen hundred Mayor and aldermen authorized to lay out  
 and thirty-three, the mayor and aldermen of the city of Boston

<sup>1</sup> For general provisions respecting surveyors of highways, see Gen. Stats.  
 c. 18, §§ 74-76; cc. 44, 45.

street in continuation of Broad and Commercial Streets.  
1833, 185, § 1.

were authorized to lay out a new street, in continuation of Broad Street, beginning at or near the then easterly end of said Broad Street, and thence running partly over the margin of Fort Hill, and over other land near the harbor of Boston, to a point at or near the place where Summer Street meets Sea Street; and also to lay out a new street, extending from the then termination of Commercial Street, near Lewis's Wharf, so called, to the marine railway on Ann Street. And the said streets were directed to be laid out respectively of such widths, in such directions, and through and over such docks, then used for the purposes of navigation, as the public safety or convenience of the inhabitants of said city should, in the opinion of said mayor and aldermen, require.

In continuation of Front St.  
1834, 65, § 1.

39. By an act passed March eleven, eighteen hundred and thirty-four, the mayor and aldermen of the city of Boston were authorized to lay out a new street, in continuation of Front Street,<sup>1</sup> beginning at or near the southerly end of said Front Street, and thence running in a southwesterly direction over the tide waters to Northampton Street. And said street was required to be laid out in such direction, and through and over such docks and flats, as the public safety or the convenience of the inhabitants of said city should, in the opinion of said mayor and aldermen, require.<sup>2</sup>

Compensation for land, &c.  
1833, 185, § 2.  
1834, 65, § 2.

40. It was provided by the said acts, that the owner or owners of any building, wharf, or other erection, which might be removed, and of any land or flats which might be taken for said streets, should be entitled to receive compensation for the damages occasioned thereby.

In continuation

41. By an act passed April twenty-eight, eighteen hundred

<sup>1</sup> Now called Harrison Avenue.

<sup>2</sup> See "An act to incorporate certain persons for the purpose of making street from Rainsford's Lane, in the town of Boston, to the bridge proposed to be built from, at, or near the town's landing, to Dorchester Neck," 1803, c. 114, 3 Special Laws, 375; and two acts in addition thereto, viz: 1804, c. 3, *ibid.* c. 442; 1805, c. 92, 4 Special Laws, 28.

A highway may be located, without special authority of the legislature, over flats lying between high and low water mark, which have been lawfully filled up by the proprietor of the adjoining upland. *Henshaw v. Hunting*, 1 Gray, 203.

and fifty-four, the mayor and aldermen of the city of Boston were authorized and empowered to lay out a highway, in continuation of Clinton Street, in said city, not exceeding sixty feet wide, and extending from the easterly line of Commercial Street, easterly, not exceeding two hundred and forty feet, and from some point on the said continuation, extending northeasterly, not exceeding sixty-six feet wide, and nearly parallel with said Commercial Street, to Eastern Packet Pier, and from some point on the said continuation of Clinton Street, extending southwesterly, not exceeding forty feet in width, to City Wharf, so called; *provided*, that the assent of the proprietors of the flats over which the said highway shall pass, shall be first obtained.

42. By an act passed March twenty-six, eighteen hundred and fifty-five, the proper authorities of the city of Boston were empowered to lay out and construct a highway in continuation of Charles Street, commencing at Cambridge Street, thence over the land in front of the new jail, thence over the tide waters in Charles River, and thence to North Charles Street, and over and along said street to the street leading to Cragie's Bridge, so called; and the said authorities were empowered to lay out the said proposed street, the whole distance at one time, or portions thereof at different times, as they should deem expedient; *provided*, that the said street should not be laid out below the commissioners' line, as established by law.<sup>1</sup>

43. By the act of April six, eighteen hundred and sixty-one, in relation to streets on the Back Bay, the various streets and ways on the Back Bay, in the city of Boston, and on the northerly side of the Milldam, as laid down on the general plan thereof, accompanying the fifth annual report of the commissioners on the Back Bay, and dated Boston, January twenty-first, eighteen hundred and fifty-seven, and deposited in Suffolk Registry of Deeds August thirty-first, eighteen hundred and

<sup>1</sup> For the establishment of the Mount Washington Avenue to South Boston, see Stat. 1853, c. 255, *ante*, pp. 71-73.

1861, 142.

fifty-eight, with such modifications and alterations as have been made by the commissioners, shown on the plan recorded in Suffolk Registry of Deeds, liber seven hundred and eighty-eight, folio one hundred and fifty-nine, are hereby ratified and confirmed; and the said commissioners shall have the general control of all streets, ways, and squares on the land of the commonwealth, and may offer them or any portion of them for acceptance by the city of Boston, on such terms and conditions as they may deem expedient, subject to the approval of the governor and council; *provided*, that nothing herein contained shall be construed to authorize the commissioners on the Back Bay to postpone or modify the operation of the fourth section of chapter one hundred and fifty-four of the Acts of the year one thousand eight hundred and fifty-nine.

Streets and  
drainage on the  
Back Bay.  
Resolve  
1862, c. 96.  
See Sewers,  
*ante*, p. 657.  
§ 15, and note.

44. The resolve of April thirty, eighteen hundred and sixty-two, in relation to streets and drainage of the Back Bay, provides "that the commissioners on public lands be, and they hereby are authorized to make such modifications of existing agreements in relation to the drainage of the Back Bay territory, so called, situated between the Milldam and Tremont Street, in Boston, as may be agreed upon by the city of Boston and all other parties to such agreements, subject to the approval of the governor and council; and they may authorize the making of such new streets and ways, and the discontinuance of such streets and ways as have already been made or provided for, on the territory of the Boston Water Power Company, and may connect any such streets with the streets on the commonwealth's territory, as they may deem expedient, and upon such terms and conditions as they may determine upon, subject to the approval of the governor and council; but before proceeding to act on this resolve, the commissioners shall give public notice by advertisement in two newspapers published in Boston of the time and place at which all parties having any objections to such changes, or the laying out of such streets, may be heard."

ORDINANCE.<sup>1</sup>

SECTION 1. The several streets in the city shall continue to be called and known by the names given to them respectively, by the selectmen of the town of Boston, the mayor and aldermen of the city, or the city council, until the same shall be altered by the board of aldermen.

Streets to retain their names till altered.  
Sept. 30, 1850.

SECT. 2. There shall be chosen annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a superintendent of streets, who shall hold his office for one year from the first Monday of April in the year in which he shall be chosen, and until his successor is chosen and qualified, or he is removed. He shall be removable at the pleasure of the city council, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation as the city council shall from time to time determine.

Superintendent of streets to be chosen, removal, &c.  
Ibid.

SECT. 3. The superintendent of streets shall give bond, with one or more sureties to the approbation of the board of aldermen, with condition that he shall faithfully perform all the duties of his office, and account for all moneys entrusted to him, and that he will not, directly or indirectly, for himself or others, or by others in trust for him, or on his account, have any interest or concern in any purchase, lease, contract, or agreement, to be made in pursuance of this ordinance.<sup>2</sup>

Superintendent to give bond.  
May 17, 1853.

SECT. 4. The said superintendent is authorized to appoint an assistant, to act under his control and direction, who shall be approved by the board of aldermen, and who shall receive such compensation as the city council may from time to time determine. The said assistant may be removed at any time by the said superintendent, or the board of aldermen.

He may appoint an assistant.  
Sept. 30, 1850.

SECT. 5. The said superintendent shall attend at his office a portion of each day. He shall keep a record of all his pro-

Superintendent to attend at his office.

<sup>1</sup> An ordinance in relation to streets, passed September 30, 1850, and ordinances in addition thereto, passed May 17, 1853; July 18, 1853; April 24, 1854; December 28, 1854; April 28, 1863.

<sup>2</sup> See *Contracts with City Officers*, ante, pp. 124, 125.

To keep record  
and books, &c.  
Sept. 30, 1850.

To make re-  
ports.  
Ibid.

To superintend  
streets, &c.  
Ibid.

City not respon-  
sible for his  
acts, unless, &c.  
Ibid.

To make bills  
for things sold,  
&c.  
July 18, 1853.

Treasurer to  
collect same.  
Ibid.

ceedings, and a set of books, in which shall be entered, under appropriate heads, the receipts and expenditures in his department, with the names of all persons who have furnished materials, and of all workmen, and the amount paid to each individual; and he shall make a quarterly report thereof to the city council. On or before the tenth day of January, annually, he shall make a report to the city council, containing a general statement of the expenses of his department during the preceding year, the amount expended on the various streets, and such other information as he may consider desirable, together with an estimate in detail of the property under his charge belonging to the city.

SECT. 6. It shall be the duty of the said superintendent, under the direction and control of the board of aldermen, to superintend the general state of the streets; to attend to the laying out, widening, elevation, and repairs of the same, and to make all contracts for the supply of labor and materials therefor; to give notice to the mayor or the chief of police, of any nuisance, obstruction, or encroachment thereon. And the city shall not be responsible for any of his doings that have not been ordered by the city council or the board of aldermen, or sanctioned by express vote.

SECT. 7. Whenever the superintendent of streets shall sell any articles or materials belonging to the city, or shall do, or cause to be done, any work for any individual from which money shall become due to the city, he shall enter in books to be kept for that purpose, all such sales and work done, with the price thereof, and shall forthwith make out bills for the same and deliver them to the city treasurer for collection, and the said treasurer shall forthwith demand payment of the said bills, and in case any bills or dues under this ordinance shall remain unpaid at the expiration of three months after demand for payment as aforesaid, the said treasurer shall cause the same to be collected, by a resort to the proper legal process; *provided, however*, that when in the opinion of the mayor the interests of the city demand it, he may at any time order legal proceedings to be commenced.

SECT. 8. The pay-rolls of the laborers employed under the direction of the superintendent of streets shall be made up and certified by the said superintendent, and upon being duly allowed and audited shall be paid by the city treasurer, at such times and places as he shall appoint, and he may employ a clerk for that purpose.

To make up  
pay-rolls.  
July 18, 1853.

SECT. 9. No person or persons shall break or dig up, or assist in breaking or digging up, any part of any street, or remove any gravel or other similiar thing therefrom without having first obtained the license of the board of aldermen, in writing, for that purpose.<sup>1</sup>

Streets not to  
be dug up, &c.  
Sept. 30, 1850.

SECT. 10. Whosoever shall, by virtue of such license, break or dig up, or cause to be dug or broken up, any part of any street, shall, within such time as the board of aldermen, or some person by them authorized,<sup>2</sup> may order, cause the same to be repaired and amended, to the satisfaction of the said board, under a penalty of not less than five dollars, nor more than fifty dollars, for each and every day he or they shall neglect or refuse so to do, after such order.

Persons so dig-  
ging to repair  
the same, &c.  
Ibid.

SECT. 11. When any drain or aqueduct shall be opened or laid, or any aperture shall be made in any street, the person or persons, or either of them, by or for whom the said drain or aqueduct shall be opened or laid, or such aperture made, shall cause a rail or other sufficient fence to be placed and fixed, so as to enclose such drain, aqueduct, or other aperture, and the dirt, gravel, or other material thrown into the street, as afore-said; and such fence shall be continued during the whole time such drain, aqueduct, or aperture shall be open. And a lighted lantern, or some other proper and sufficient light, shall be fixed to some part of such fence, or in some other proper manner

When drain or  
aqueduct is re-  
paired, a fence  
and lights to be  
put up.  
Ibid.  
See § 37.

<sup>1</sup> By Gen. Stats. c. 48, § 8, it is provided that whoever digs or breaks up the ground in any highway, street, or lane in any town, for the laying, altering, or repairing of any drain or common sewer, without the consent of the selectmen in writing, shall forfeit the sum of five dollars for each offence, to the use of the town, to be recovered by the treasurer thereof.

<sup>2</sup> The superintendent of streets was authorized to issue permits under this section, March 2, 1857.

Sept. 30, 1850. over or near such open drain, aqueduct, or aperture, and the dirt, gravel, or other material taken from the same, and so kept from the beginning of the twilight of the evening through the whole of the night, and shall be continued every evening and night during all the time such drain, aqueduct, or aperture shall be open, or in a state of repair.

Notice to be  
given of inten-  
tion to build,  
&c.  
Ibid.

Regulations in  
such case.  
Ibid.

SECT. 12. Every person intending to erect<sup>1</sup> or to repair any building upon land abutting on any of the streets, shall make the same known to the board of aldermen, who shall have power and authority to allot such portion of the street, thereto adjoining, as they or some person duly authorized shall deem expedient and necessary. And the part or portion so allotted, if any, and no other part of said street, shall be used for laying all the materials for any such building or repairing, and for receiving the rubbish arising therefrom. And all the rubbish arising therefrom or thereby, shall be carried away by the person or persons so building or repairing, at such convenient time as the board of aldermen, or other person by them authorized as aforesaid, may direct; and in case of neglect or refusal so to do, it shall be removed by the superintendent of streets, or other person authorized as aforesaid, at the expense of such person or persons. And, in all cases, the portion so allotted shall be enclosed and lighted as prescribed in the preceding section. And such portion of the street allotted as aforesaid shall not be used more than thirty days, on one application.

Placing coal or  
firewood in  
streets, regu-  
lated.  
Ibid.

SECT. 13. Neither the purchaser nor seller of any coal or firewood shall place or permit any such coal or firewood to remain in any street more than thirty minutes after sunset in the evening; nor shall any greater quantity than two loads of such wood or coal, in any case be permitted, either by the purchaser or seller, or other person having the charge thereof, to lie or continue in any street. Nor shall any purchaser, or seller, or other person as aforesaid, permit any such wood or coal, at any time, by day or night, to remain in any street, so as

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<sup>1</sup> See § 1, p. 92, *ante*.

to obstruct the passage in the same, nor more than two hours in any case. Sept. 30, 1850.

SECT. 14. No person shall play at foot-ball, or throw stones or snowballs, within any of the streets, or throw stones on the common, or in any of the public squares. Playing at foot-ball, throwing stones and snowballs. Ibid.

SECT. 15. No person shall shoot with, or use a bow and arrow, in any street, or on the common, or in any of the public squares. Shooting with bow and arrow forbidden. Ibid.

SECT. 16. No person shall expose, in any street, or on the common, or in any public square, any table or device of any kind whatsoever, upon, or by which any game of hazard or chance can be played; and no person shall play at any such table or device, or at any unlawful game, in any street, or on the common, or in any public square. Exposing gaming tables. Ibid.

SECT. 17. No person shall course or coast upon a sled in any street. Coasting upon sleds. Ibid.

SECT. 18. No person shall swim or bathe in the waters surrounding the city which are adjacent to any of the wharves, bridges, avenues, or railroads leading into the same, so as to be exposed to the view of the spectators. Bathing in waters surrounding the city. Ibid.

SECT. 19. No person shall take or remove any street dirt or manure, collected from any street, without the license of the board of aldermen first obtained. Taking street dirt without license. Ibid.

SECT. 20. No person shall obstruct any street, or any part thereof, by placing therein any house, barn, shop, or other building; and no person shall remove or draw, through or upon any street, any house, barn, shop, or other building, without the permission of the board of aldermen. Any person offending against either of the provisions of this section, and any person who shall aid and assist in so offending, shall be liable to a penalty of not less than ten nor more than fifty dollars, and of a like sum for every twelve hours that the said obstruction shall continue, or that the said house, barn, shop, or other building shall remain in or upon any street.<sup>1</sup> Obstructing street by moving buildings. Ibid.

SECT. 21. No person shall place, or cause to be placed, or Suspending

<sup>1</sup> See the case of *Pike v. Brimmer*, 9 Law Reporter, 221.

goods, so as to  
project into  
street.  
Sept. 30, 1850.

shall suspend or cause to be suspended, from any house, shop, store, lot, or place over any street, any goods, wares, or merchandise whatsoever, or any other thing, so that the same shall extend or project from the wall or front of said house, store, shop, lot, or place more than one foot towards or into the street.

Awnings and  
shades.  
Ibid.

SECT. 22. It shall be lawful to place, or continue to maintain, awnings and shades before any house, shop, or store in any street, upon the terms and under the regulations mentioned in this section, and not otherwise; *provided*, that the board of aldermen, as to particular buildings or streets, may order that no awnings or shades shall be erected. Such awnings and shades shall be safely fixed and supported, in such manner as not to interfere with passengers, and so that the lowest part thereof shall not be less than nine feet in height, above the sidewalk or street, and in no case to extend beyond the line of the sidewalk; and the person so placing or continuing to maintain the same, shall in all respects conform to any directions in relation to the materials, the construction and maintenance thereof, which shall be given by the board of aldermen.

Projecting  
signs, lanterns,  
&c.  
Ibid.

SECT. 23. No persons shall hang, affix, erect, or fasten any sign, show bill, lantern, or show board of any description whatsoever, which shall project into any street more than one foot, under a penalty of not less than four nor more than fifty dollars, for each offence, and the like penalty for every day such sign, show bill, lantern, or other board shall be continued, after an order to remove the same, given by the board of aldermen, or any person authorized by them.

Same subject.  
Ibid.

SECT. 24. No sign, show bill, lantern, show board, or other thing, which at its lowest part is less than nine feet in height above the sidewalk or street, shall project into any street more than six inches, under a penalty of not less than four nor more than fifty dollars for each offence, and the like penalty for every day such sign, show bill, lantern, show board, or other thing shall be continued after an order to remove the same, given by the board of aldermen, or any person authorized by them.

Ringling bells or

SECT. 25. No person, unless duly licensed by the board of

aldermen, shall ring, or cause to be rung, any bell, or use or cause to be used any horn or other instrument, in any street, to give notice of the exercise of any business or calling, or for the sale of any article.

blowing horns.  
Sept. 30, 1850.

SECT. 26. No person shall stand in any street for the purpose of grinding cutlery, or for the sale of any article, or for the exercise of any other business or calling, unless duly licensed by the board of aldermen.

Standing to  
grind cutlery,  
or sell goods,  
&c.  
Ibid.

SECT. 27. No person shall construct or place, or cause to be constructed or placed, any portico, porch, door, window, or step, which shall project into any street, under a penalty of not less than four nor more than fifty dollars for each offence, and a like penalty for every day that the said portico, porch, door, window, or step shall be continued as aforesaid, after notice to remove the same from the board of aldermen, or some person by them authorized.

Projecting  
porches, doors,  
windows, steps,  
&c.  
Ibid.

SECT. 28. No person shall affix or place, or cause to be affixed or placed, or continue in any street, any grating, without the license of the board of aldermen; and no grating shall be placed in any sidewalk the spaces between the bars of which shall be more than one inch and a quarter in width; and no grating shall project more than eighteen inches into the street.

Gratings in  
streets, how  
licensed and  
constructed.  
Sept. 30, 1860.  
April 28, 1863.  
See Rules, &c.,  
post, p. 720.

SECT. 29. No person shall construct or maintain any cellar door or cellar door-way in any sidewalk, or projecting into any street, or construct any entrance or flight of steps descending immediately from any street into any cellar or basement story of any building, for the purpose of being kept open as an entrance, without a license from the board of aldermen. And all such cellar doors, door-ways, and steps shall be constructed in such manner as said board shall direct.

Cellar doors,  
door-ways and  
steps not allow-  
ed without  
license.  
April 28, 1863.

SECT. 30. No occupant or other person having the care of any building shall suffer any cellar door, or cellar door-way, or entrance or flight of steps mentioned in the preceding section, to remain open, or the platform thereof to be removed, more than fifteen minutes during any part of the night-time, (and when so removed during the night-time the same shall be

Not to remain  
open unless, &c.  
Ibid.

April 28, 1863.

properly lighted,) or for more than two hours in the whole during the daytime unless licensed so to do by the board of aldermen; and in all cases in which any such cellar door or cellar door-way, or entrance or flight of steps shall be open, the same shall be properly guarded. This section shall apply to any such cellar door, cellar door-way, entrance, or flight of steps, which is now, or shall hereafter be made.

Steps descending from streets to be enclosed and lighted. Ibid.

SECT. 31. Every entrance or flight of steps, descending immediately from or near the line of any street, into any cellar or basement story of any building where such entrance or flight of steps shall not be safely and securely covered, shall be enclosed with a railing on each side, permanently put up, at least three feet high from the top of the sidewalk or pavement, together with either a gate to open inwardly, or two iron chains across the front of the entrance-way, one near the top and the other half way from the ground to the top of the railing; and such gate or chains shall, unless there be a burning light over the steps to prevent accidents, be closed during the night.

Excavations and apertures in street. Ibid. See Rules, &c., *post.* p. 720.

SECT. 32. No person shall make or cause to be made any excavation or aperture in any street, for any purpose whatsoever, without a license from the board of aldermen, or from some person by them authorized, on such terms as said board may prescribe. Every application for a license under this section shall be made in writing and signed by the applicant, and shall set forth the dimensions of the proposed excavation or aperture, and the purpose for which it is to be used; and every such license shall provide that such excavation or aperture shall not be used for any other purpose than that stated in the application; and such license may at any time be revoked by the board of aldermen.

Excavation not to extend under street more than, &c. April 28, 1863.

SECT. 33. No person shall make or cause to be made any excavation, the inner face wall of which shall extend further under the street than to a line eighteen inches inside the line of the outer edge of the curb-stone.

Coverings of coal-holes, excavations, and apertures. Ibid.

SECT. 34. All coverings of coal-holes, excavations, or apertures, in any street or the sidewalks thereof, excepting cellar door-ways and bulkheads, shall be constructed of iron or of iron

and glass, North River flagging-stone or rough surface granite ; April 28, 1863. and shall be of such description and workmanship as the board of aldermen shall direct. Whenever any such covering shall not be so constructed, or shall in the opinion of said board be unsafe or inconvenient for the public travel, said board may order the same to be removed, and a suitable one put in its place ; and if the same shall not be done within ten days from the service of said order on the owner or tenant of the premises, or other person having the care thereof, the superintendent of streets shall make such change, and the expense thereof shall be paid by such owner, tenant, or other person having the care of the premises ; and no person shall leave such coal-hole, excavation, or aperture open or unfastened after sunset, nor in the daytime, unless while in use by some person or persons actually attending the same.

SECT. 35. The board of aldermen, upon the application of any person, may authorize the construction of coal-holes or other apertures, and of gratings, as hereinbefore mentioned, in such manner and under the direction of such person, as they may deem suitable, at the expense of the applicant ; and they may also authorize the continuance of any grating already constructed ; *provided*, that in no case shall any grating be authorized to extend more than eighteen inches into the street.

Coal-holes and gratings may be authorized, &c. Sept. 30, 1850. See Rules, &c., *post.* p. 720.

SECT. 36. No person shall insert in any sidewalk any sign, without the permission of the board of aldermen, or of some person by them authorized.

No signs in sidewalks unless, &c. April 28, 1863.

SECT. 37. Any person licensed or permitted by the board of aldermen, or by some person by them authorized, to occupy any part of the highway while erecting or repairing any building, opening any sewer or drain, making any excavation, or for any other purpose, shall provide safe and convenient passage round or over the same for public travel, and shall be responsible to the city for any injury sustained in consequence of any neglect so to do. And any such person or others occupying any part of the highway as aforesaid, or removing therefrom any gravel or other materials, shall, when requested by the superintendent of streets or any police officer, exhibit his license or permit for such occupation or removal.

Safe passage around or over apertures or structures to be provided. *Ibid.*

Responsibility for injuries. *Ibid.*

License to be shown on request. *Ibid.*

Vacant lots abutting on accepted streets to be fenced.  
April 28, 1863.

SECT. 38. Every owner of a vacant lot of land which abuts upon any accepted street in this city shall cause to be erected and maintained on the line of said lot adjoining the highway a suitable fence of rails, boards, or other materials; and the superintendent of streets is authorized to erect such fence or fences in all cases that he considers dangerous, at the expense of the parties interested, where, after notice, the owner or owners neglect to provide the same.

Feeding horses or animals in the street forbidden.  
Sept. 30, 1850.

SECT. 39. No owner, or person having for the time being, the charge or use of any swine, horse, oxen, or other grazing animal, shall bait or feed the same in any street.<sup>1</sup>

Riding or driving faster than six miles an hour forbidden.  
Ibid.  
3 Pick. 462.

SECT. 40. No owner, or person having for the time being the care or use of any horse, or other beast of burden, carriage or draught, shall ride, drive, or permit the same to go at a faster rate than six miles an hour, in any street.<sup>1</sup>

Horses, kine, swine, &c., not to go at large.  
Ibid.  
Sept. 30, 1850.

SECT. 41. No owner, or person having the charge of any horse, kine, swine, sheep, goat, or other grazing animal, shall turn or permit the same to go at large or loose into or in any street.

No person to water streets, &c., without license.  
April 24, 1854.

SECT. 42. No person shall water any of the streets, lanes, alleys, courts, common, or public squares within the city of Boston, by or with a watering cart, without having first obtained a license therefor from the board of aldermen.

License to run not more than a year.  
Ibid.

SECT. 43. All licenses granted by the board of aldermen to any person to water streets, shall run for not more than one year, and shall contain such conditions and restrictions as the board of aldermen shall prescribe, and shall also be subject to such rules and regulations as the said board of aldermen shall from time to time prescribe.<sup>2</sup>

#### SIDEWALKS.

Surveyors of highways (aldermen) to reg-

SECT. 44. The surveyors of highways<sup>3</sup> are hereby empowered so to regulate the width and height of the sidewalks of any

<sup>1</sup> The *Rules and Orders of the Board of Aldermen*, ante, pp. 106-108, §§ 36-40, apply to horses, &c., harnessed to carriages.

<sup>2</sup> See *Rules and Regulations*, May 1, 1854.

<sup>3</sup> The board of aldermen are the surveyors of highways. See *Charter*, § 41, p. 17, ante.

streets, as shall in their judgment be most conducive to the convenience and interest of the city, and they may accept such sidewalks, after the same shall be put in good and perfect repair by the abutters on such streets, and after the same shall be relinquished in writing to the said city by such abutters.<sup>1</sup>

ulate the width and height of sidewalks.  
May accept the same.  
1799, 31, § 1.  
1833, 128.  
Sept. 30, 1850.

SECT. 45. After such relinquishment and acceptance, such sidewalks shall be maintained at the expense of the city; *provided*, that when any sidewalk shall require repairs, in consequence of any defect in the cellar door, curb, step, or steps, cellar window, coal-hole, cellar wall, or from any other cause within the control of the owner or occupant of the estate to which such sidewalk adjoins, then and in that case such repairs shall be made at the expense of such owner or occupant.

After acceptance, &c., sidewalks to be maintained by the city, *provided*, &c.  
Ibid.

SECT. 46. The city clerk shall keep a book in which the names of the streets shall be alphabetically arranged, and in which all the sidewalks which now are or may hereafter be accepted as aforesaid, shall be entered, with the date of such acceptance, the length and width of such sidewalk, and the names of the owners of the estate to which it belongs, and of the owner or owners of the adjoining estates.

City clerk to keep record of names of streets, and acceptance of sidewalks.  
Ibid.

SECT. 47. No person shall drive, wheel, or draw any coach, cart, handcart, hand-barrow, or other carriage of burden or pleasure, whether of the same description or not, except children's hand-carriages, containing children only, and drawn by hand, or drive, or permit any horse under his care to go or stand, upon any foot-path or sidewalk in the city.

Carriages forbidden on sidewalks, except, &c.  
Ibid.

SECT. 48. No person shall saw any firewood, or place the same, upon the foot or sidewalk of any street, and no person shall stand on any such foot or sidewalk, with his wood-saw or horse.

Sawing or placing firewood on sidewalks.  
Ibid.

SECT. 49. Three or more persons shall not stand in a group, or near to each other, on any sidewalk, in such a manner as to obstruct a free passage for foot passengers, for a longer time than twenty minutes, under a penalty of not less than three nor

Standing in a group, so as to obstruct the passage.  
Ibid.

<sup>1</sup> See Stat. 1833, c. 128, *ante*, p. 699, § 28. But see *Bacon v. Boston*, 3 Cush. 174; *City of Lowell v. French*, 6 Cush. 223.

Sept. 30, 1850. more than fifty dollars ; nor more than five minutes after a request to move on, made by the mayor, or any police officer, under a like penalty.

Placing lumber,  
bales, &c., on  
sidewalks.  
Ibid.

Penalty.

Penalty.

SECT. 50. No person shall place, or cause to be placed, upon any foot-path or sidewalk in the city, any lumber, iron, coal, trunk, bale, box, crate, cask, package, or article or thing whatsoever, whether of the same description or not, for more than five minutes, under a penalty of not less than three nor more than fifty dollars ; and if such person shall suffer the same to remain more than one hour after being first placed there, or more than ten minutes after notice to remove the same, given by the mayor, by any aldermen, or by any policeman, the person or persons so offending shall be liable to a penalty of not less than five dollars nor more than ten dollars for every such offence ; and for each and every hour thereafter, that the same shall be suffered to remain, the person or persons so offending shall be liable to a penalty of not less than five nor more than fifty dollars ; *provided*, that nothing contained in this section shall be deemed to extend to such goods, wares, or merchandise as shall, in conformity with such rules, regulations, and orders as shall be made by the board of aldermen upon the subject, be placed in any street, lane, court, alley, square, or place, for the purpose of being sold at public auction.

Snow to be re-  
moved from  
sidewalks by  
abutters.  
Ibid.

SECT. 51. The tenant, occupant, and, in case there shall be no tenant, the owner, or any person having the care of any building or lot of land bordering on any street, lane, court, square, or public place within the city, where there is any footway or sidewalk, shall, after the ceasing to fall of any snow, if in the daytime, within one hour, and if in the night-time, before nine of the clock in the forenoon succeeding, cause the same to be removed therefrom, and in default thereof, shall forfeit and pay a sum not less than two dollars, nor more than ten dollars ; and for each and every hour thereafter that the same shall remain on such footway or sidewalk, such tenant, occupant, owner, or other person shall forfeit and pay a sum not less than one dollar nor more than ten dollars.<sup>1</sup>

<sup>1</sup> A by-law of a city, requiring the owners or occupants of houses bordering

SECT. 52. The provisions of the preceding section shall also apply to the falling of snow from any building.

To extend to snow falling from any building. Sept. 30, 1850. Sidewalks encumbered with ice to be made safe, &c. Ibid.

SECT. 53. Whenever the sidewalk, or any part thereof, adjoining any building or lot of land, on any street, shall be encumbered with ice, it shall be the duty of the occupant, and in case there is no occupant of the owner, or any person having the care of such building or lot, to cause such sidewalk to be made safe and convenient, by removing the ice therefrom, or by covering the same with sand or some other suitable substance; and in case such owner, or occupant, or other person shall neglect so to do for the space of six hours during the daytime, he shall forfeit and pay a sum not less than two nor more than five dollars, and a like sum for every day that the same shall continue so encumbered.

Penalty.

SECT. 54. Every person who shall lay, throw, or place, or cause to be laid, thrown, or placed, any ice or snow into any street, within the city, shall cause the same to be broken into small pieces, and spread evenly on the surface of such street, and in default thereof shall be liable to a penalty of not less than two dollars nor more than five dollars for every offence.

Ice or snow thrown into street, to be broken up, &c. Ibid.

Penalty.

SECT. 55. Whenever the word "street" or "streets" is mentioned in this ordinance, it shall be understood as including alleys, lanes, courts, public squares, and public places; and it shall also be understood as including the sidewalks, unless the contrary is expressed, or such construction would be inconsistent with the manifest intent of the city council.

Meaning of the word "street" defined. Ibid.

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on streets to clear the snow from the sidewalks adjoining their respective houses and lands, is not, strictly speaking, a by-law levying a tax; and inasmuch as the burden created by it is imposed on a numerous class, and upon all persons equally who come within the description of such class, and as they commonly derive a peculiar benefit from the duty required, and are peculiarly able to perform it with the promptness which the good of the community demands, the by-law is not partial and unequal, within the sense of the provision of the constitution, that assessments, rates, and taxes imposed and levied on the inhabitants of the commonwealth, shall be proportional and reasonable; but such by-law is reasonable and valid. *Goddard, Petitioner*, 16 Pick. 504.

Such a by-law is not invalid on account of a part of the city peculiarly situated being expressly exempted from its operation. *Ibid.*

Who shall be  
liable to penal-  
ties.  
Sept. 30, 1850.

SECT. 56. Whenever anything is prohibited in this or any other ordinance, the person actually doing such prohibited thing, as well as his agent or employer, shall be liable to the penalty prescribed.

Acts forbidden  
to be done with-  
out license, may  
be licensed.  
Ibid.

SECT. 57. Whenever, in this or any other ordinance, any-thing is prohibited to be done without the permission or license of any officers or board, such officers or board shall have the power to permit or license such thing to be done.

Rights and du-  
ties of survey-  
ors of highways  
not limited by  
this ordinance.

SECT. 58. The foregoing provisions shall not be taken or construed as limiting in any manner the legal rights and duties of the surveyors of highways to make any alterations and repairs in the streets, which they may deem the safety and convenience of the inhabitants to require.

Penalties.

SECT. 59. Any person violating any of the provisions of this ordinance, except where a different penalty is otherwise specially provided in any section thereof, shall be liable to a penalty of not less than two nor more than fifty dollars for each offence, and to a like penalty for each day's continuance thereof.

#### RULES AND REGULATIONS.<sup>1</sup>

The superin-  
tendent of  
streets may  
grant permits  
for excavations.  
Oct. 19, 1863.

SECTION 1. The superintendent of streets is hereby author-ized to issue permits for the purpose of making excavations or apertures in any street, or under the sidewalks thereof, as re-quired by the ordinance in relation to streets, passed April twenty-eight, eighteen hundred and sixty-three, upon the fol-lowing conditions, viz :—

How coal-holes,  
&c., shall be  
made, and of  
what materials,  
&c.  
Ibid.

All coal-holes or vaults of any description that may hereafter be made under the sidewalks in the city of Boston, shall be con-structed as follows : The outer wall next to the carriage-way or road-way shall be formed of heavy granite, of not less than two and one half feet in thickness, which shall be laid with good cement ; and no part thereof shall project more than six inches beyond the edge-stone. The sides of such vaults shall be at

<sup>1</sup> Rules and regulations in relation to the construction of coal-holes, vaults, &c., under the sidewalks, passed by the Board of Aldermen, October 19, 1863.

least one foot thick, and be composed of good hard bricks or granite blocks laid in cement mortar. The top of the coal-hole or vault shall be formed either by a brick arch or arches, turned over said coal-hole or vault in a good and substantial manner, or by covering said coal-hole or vault with rough hammered granite, at least one foot thick, or Blue stone, or North River flag-stone, at least six inches thick, or iron and glass, or rough surface iron, similar in character to the "Hyatt Light," as it is called. Each coal-hole or vault thus constructed shall not exceed eleven feet in depth, measuring from the top of the sidewalk. The aperture in the sidewalk over said coal-hole or vault shall be covered with a substantial iron plate, with a rough surface, to prevent accidents. The entire construction of said coal-holes or vaults shall be subject to the directions and supervision of the superintendent of streets, or such other person as the board of aldermen may designate. Coal slides are permitted to be placed in the sidewalks, and shall be constructed of at least eight-inch brick walls laid in good cement mortar, and the whole covered as before mentioned.

Oct. 19, 1863.

Depth of coal-hole and vault, covering, &c.  
Ibid.

Coal-slides permitted; how constructed.  
Ibid.

SECT. 2. The owner and tenant of the abutting estate in front of which the coal-hole or vault is thus permitted to be constructed shall be held responsible to the city for any and all damages to persons or property in consequence of any defect in the construction of such vault or coal-hole, or for allowing the same or any portion thereof to remain out of repair; and such owner and tenant shall be required to keep the said vault or coal-hole, its walls and coverings, in good order at all times.

Owner, &c., responsible for all damages; shall keep vaults, &c., in repair.  
Ibid.

SECT. 3. The occupant of any estate abutting on such a vault or coal-hole shall be held responsible to the city for any and all damages occasioned to persons or property in consequence of the aperture in the sidewalk being left exposed and uncovered, or from the covering thereof being left insecure or unfastened; and said occupant shall be required to keep such coal-hole or vault cover in good order, and safe for public travel over the same.

Occupants liable for all damages by leaving aperture uncovered, &c.  
Ibid.

SECT. 4. No boiler, steam-shaft, furnace, or steam-pipe, no cesspool, privy, or water-closet shall be constructed or located

Boilers, furnaces, privies, &c., not to be

located for use, for use, no explosive substance or inflammable oil shall be stored or any explosive, under any sidewalk in this city, and no excavations, when permitted, shall be ventilated into the street.

Oct. 19, 1863.  
Excavations to be filled up by owner, &c.  
Ibid.

SECT. 5. Any excavation under the sidewalk, whether licensed or not, shall be closed and filled up at the owner's expense, after one week's notice to that effect given by the board of aldermen.

When coal-hole, &c., is unsafe, aldermen may order its removal, &c.; if not done by owner, city may do it, &c.  
Ibid.

SECT. 6. Whenever any coal-hole, or vault, under any sidewalk or any aperture constructed therein shall not be covered or secured as provided in section one, or shall in the opinion of the board of aldermen be unsafe or inconvenient for the public travel, said board may order the same to be removed, and a suitable one put in its place; and if the same shall not be done within ten days from the service of said order on the owner or tenant of the premises, or other person having the care thereof, the superintendent of streets shall make such change, and the expense thereof shall be paid by such owner, tenant, or other person having the care of the premises; and no person shall leave such coal-hole, excavation, or aperture open or unfastened after sunset, nor in the daytime unless while in use by some person or persons actually attending the same.

Not to be left uncovered, &c., except, &c.  
Ibid.

Applications for permit to be in writing; excavation not to be used for other purposes than those asked for.  
Ibid.

SECT. 7. Every application for a permit shall be made in writing, and signed by the applicant, and shall set forth the dimensions of the proposed excavation or aperture, and the purpose for which it is to be used; and such excavation or aperture shall not be used for any other purpose than that stated in the application, without the consent of the committee on paving and the superintendent of streets; and such permit may at any time be revoked by the board of aldermen. Every applicant will be required to sign an agreement to conform, on his part, to all the provisions and requirements of the foregoing conditions. Said conditions shall be printed upon each permit which is issued, and any violation of the same shall work a forfeiture of the privilege thus granted, and the board of aldermen will cause said privilege to be revoked accordingly.

Applicants to perform conditions required.  
Ibid.

Chief of police to prosecute for disturbing sidewalk.

SECT. 8. The chief of police is hereby directed to prosecute all persons who shall open or disturb any sidewalk of this city,

without having a permit for that purpose as provided in the ordinance relating to streets, passed April twenty-eight, eighteen hundred and sixty-three. walks without permit. Oct. 19, 1863.

## TAXES.

### STATUTES.

#### PERSONS AND PROPERTY SUBJECT TO TAXATION.

1. Persons subject to a poll tax.
2. Property subject to taxation.
3. Real estate.
4. Personal estate.

#### PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

5. Property and polls exempted :  
1st, property of the United States ;  
2d, of the commonwealth, except, &c. ; 3d, of certain institutions ;  
4th, of school districts ; 5th Bunker Hill Monument ; 6th, household furniture, &c. ; 7th, churches ; 8th, cemeteries, &c. ; 9th, estate of agricultural societies ;  
10th, of certain females to amount of five hundred dollars ; 11th, cattle, &c. ; 12th, Indians ; 13th, polls and estates of persons unable to pay.

#### WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

6. Poll tax, where assessed.
7. Person to be taxed where he designates his place of residence to be.
8. Real estate, where and to whom taxed.
9. Tenant may recover of landlord taxes paid, unless, &c.

10. Real estate of person deceased may be assessed to heirs, &c. One liable for whole with right to contribution.

11. Real estate of deceased where title is in dispute.

12. Personal estate, taxed where owner resides. Except stock in trade, &c., employed in other towns.

machinery, &c.

horses, &c.

of persons under guardianship, personal property held in trust, &c.

deposited to accumulate. of deceased persons.

13. Property held as a ministerial fund.

14. Personal property mortgaged, &c.

15. Partners may be jointly taxed for stock in trade.

#### MANNER OF ASSESSING TAXES.

16. Ships of copartners assessed where owners reside.

17. State treasurer to send tax warrants to sheriffs.

18. By what rules all taxes to be assessed.

19. Penalty if assessors refuse to obey warrant. In such case commissioners to appoint.

20. Town, &c., liable for state or county tax not assessed.
  21. Keepers of taverns, &c., to give names of persons taxable. Penalty.
  22. Assessors to give notice to bring in lists of polls and property.
  23. May verify lists by oath of party.
  24. Assessors to make a fair cash valuation.
  25. To receive lists as true, unless, &c.
  26. Penalty for agreement to assessment on limited amount, &c., with view to residence.
  27. Assessors shall make an estimate when lists are not brought in.
  28. Estimate conclusive, unless, &c.
  29. State, county, and town taxes in one assessment.
  30. County and city taxes in Boston, Chelsea, &c., exempt.
  31. Proportions to be assessed on polls and property.
  32. Assessors may add five per cent. for convenience of apportionment.
  33. Assessors to deposit copy of valuation in office.
  34. What shall be contained in valuation; estates of inhabitants; estates of non-residents.
  35. Form of tax list for collectors.
  36. Valuation list to be sworn to by assessors.
  37. Penalty on assessors omitting to take oath, &c.
  38. Assessors to commit lists to collectors, &c.
  39. Contents and form of warrant.
  40. If warrant is lost, &c., new one may issue.
  41. Discounts may be allowed.
  42. Rates of, to be posted up.
  43. Abatements.
  44. Costs before abatement, &c.
  45. If assessors refuse to abate taxes, &c.
  46. No abatement allowed, unless, &c.
  47. To be applied for within six months.
  48. If tax is paid, amount of abatement to be paid out of town treasury.
  49. Party entitled to certificate of his abatement.
  50. Assessors to assess persons applying seven days before an election.
  51. Assessors to be responsible only for fidelity, &c.
  52. Pay of assessors.
- REASSESSMENT OF TAXES.
53. Taxes, invalid, &c., except poll taxes, may be reassessed.
- ILLEGAL ASSESSMENTS.
54. To be void to extent of illegal excess.
- VALUATIONS AND RETURNS OF ASSESSORS.
55. Secretary of state to furnish books to assessors, with uniform tables.
  56. Assessors shall enter in books valuations and assessments.
  57. Assessors shall fill up table of aggregates, and make returns to secretary of state.
  58. Secretary of state shall cause books to be printed, &c., for assessors. He shall compile the returns made to him.
  59. Penalty for neglect of assessors.
- RETURNS OF CORPORATIONS.
60. Certain corporations to make returns, &c., of stocks, &c., to assessors, and register names, &c.
  61. Same subject.
  62. Banks and insurance companies to return collaterals.
  63. Penalty for neglect or false return.

64. Penalty for transfer to avoid taxation.	POWERS OF CITIES TO ASSESS TAXES, ETC.
65. Corporations to make additional returns to assessors.	69. Powers of the city council to assess taxes for city and county purposes. Rules to be adopted. May provide for assessment and collection of taxes. May elect assessors or provide for same. May require bonds.
66. Assessors to transmit to other assessors in certain cases.	
67. Corporations to return value of real estate and machinery.	
68. Cities may charge interest on certain taxes.	70. Cities and towns may grant money for certain purposes. 71. Same subject.

## STATUTES.

## PERSONS AND PROPERTY SUBJECT TO TAXATION.

1. A poll tax shall be assessed, in the manner hereinafter provided, on every male inhabitant of the commonwealth above the age of twenty years, whether a citizen of the United States or an alien. Poll tax.  
G. S. 11, § 1.  
7 Mass. 523.  
4 Met. 181.  
5 Met. 594.

2. All property, real and personal, of the inhabitants of this state, not expressly exempted by law, shall be subject to taxation as hereinafter provided. Property tax.  
G. S. 11, § 2.  
4 Met. 564.  
8 Cush. 237. 4 Gray, 500. 4 Cush. 12.

3. Real estate, for the purposes of taxation, shall include all lands within this state, and all buildings and other things erected on or affixed to the same. Real estate.  
G. S. 11, § 3.  
10 Cush. 514.

4. Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are; ships and vessels at home or abroad; money at interest, and other debts due the persons to be taxed more than they are indebted or pay interest for; public stocks and securities; stocks in turnpikes, bridges, and moneyed corporations, within or without the state; the income from an annuity, and so much of the income from a profession, trade, or employment as exceeds the sum of six hundred dollars a year; but no income shall be taxed which is derived from property subject to taxation. Personal estate.  
G. S. 11, § 4.  
16 Pet. 435.  
6 Pick. 98.  
16 Pick. 572.  
9 Met. 73, 199.  
7 Cush. 600.  
10 Cush. 128.

## PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

5. The following property and polls shall be exempted from taxation: — Property exempted.  
See G. S. c. 13, § 75. G. S. 11, § 5.

Property of the  
United States.  
Of the State.  
G. S. 11, § 5.  
4 Met. 564.  
8 Cush. 237.  
4 Gray, 500.  
Of certain insti-  
tutions.  
G. S. 11, § 5.  
2 Cush. 611.

Of school  
districts.  
G. S. 11, § 5.  
Bunker Hill  
Monument.  
Household fur-  
niture, &c.  
Ibid.

Churches.  
G. S. 11, § 5.  
1 Met. 538.

Cemeteries, &c.  
G. S. 11, § 5.

Agricultural  
societies.  
Ibid. § 5.

Property of cer-  
tain females to  
amount of five  
hundred dollars  
Ibid. § 5.

Cattle, &c.  
Ibid. § 5.

Indians.  
Ibid. § 5.  
Polls and es-  
tates of persons  
unable to pay.  
Ibid. § 5.

*First.* The property of the United States.

*Second.* The property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage for condition broken.

*Third.* The personal property of literary, benevolent, charitable, and scientific institutions, incorporated within this commonwealth, and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated.

*Fourth.* All property belonging to common school districts, the income of which is appropriated to the purposes of education.

*Fifth.* The Bunker Hill Monument.

*Sixth.* The household furniture of every person, not exceeding one thousand dollars in value, his wearing-apparel, farming-utensils, and mechanics' tools necessary for carrying on his business.

*Seventh.* Houses of religious worship, and the pews and furniture (except for parochial purposes); but portions of such houses appropriated for purposes other than religious worship, shall be taxed at the value thereof to the owners of the houses.

*Eighth.* Cemeteries, tombs, and rights of burial, so long as the same shall be dedicated for the burial of the dead.

*Ninth.* The estate both real and personal, of incorporated agricultural societies.

*Tenth.* The property to the amount of five hundred dollars of a widow or unmarried female, and of any female minor whose father is deceased, if her whole estate, real and personal, not otherwise exempted from taxation, does not exceed in value the sum of one thousand dollars.

*Eleventh.* Mules, horses, and neat cattle, less than one year old; and swine and sheep less than six months old.

*Twelfth.* The polls and estates of Indians.

*Thirteenth.* The polls and any portion of the estates of persons who, by reason of age, infirmity, and poverty, are, in the judgment of the assessors, unable to contribute fully toward the public charges.

## WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

6. The poll tax shall be assessed upon each taxable person, in the place where he is an inhabitant, on the first day of May in each year, except in cases otherwise provided for by law. The poll tax of minors liable to taxation, shall be assessed to, and in the places of the residence of, the parents, masters, or guardians having control of the persons of such minors; but if a minor has no parent, master, or guardian within this state, he shall be personally taxed for his poll, as if he were of full age. The poll tax of every other person under guardianship shall be assessed to his guardian in the place where the guardian is taxed for his own poll.

Poll tax, where assessed.  
G. S. 11, § 6.  
1 Met. 242, 250.  
4 Met. 181.  
11 Cush. 362.  
2 Gray, 484.  
12 Cush. 44,  
52, 54.

7. A taxable person in a city or town on the first day of May who, when inquired of by the assessors thereof, refuses to state where he considers his legal residence to be, shall, for the purpose of taxation, be deemed an inhabitant of such place. If when so inquired of, he designates another place as his legal residence, said assessors shall notify the assessors of such place, who, upon receiving the notice, shall tax such person as an inhabitant of their city or town. But such person shall not be exempt from the payment of a tax legally assessed upon him in the city or town of his legal domicile.

Person to be taxed where he designates his place of residence to be.  
G. S. 11, § 7.

8. Taxes on real estate shall be assessed in the city or town where the estate lies, to the person who is either the owner or in possession thereof on the first day of May. Mortgagors of real estate shall, for the purposes of taxation, be deemed owners until the mortgagee takes possession, after which the mortgagee shall be deemed the owner.

Real estate, where and to whom taxed.  
Ibid. § 8.  
1 Cush. 142.  
4 Cush. 260.  
2 Gray, 185.  
7 Gray, 127, 277.

9. When a tenant paying rent for real estate is taxed therefor, he may retain out of his rent the taxes paid by him, or may recover the same in an action against his landlord, unless there is an agreement to the contrary.

Tenant may recover of landlord, taxes paid, unless, &c.  
G. S. 11, § 9.

10. The undivided real estate of a deceased person may be assessed to his heirs or devisees, without designating any of them by name, until they have given notice to the assessors of the division of the estate, and the names of the several heirs or

Real estate of person deceased may be assessed to heirs, &c.  
One liable for whole, with

right to contribution.

G. S. 11, § 10.

devisees ; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective portions thereof.

Real estate of deceased where title is in dispute.

Ibid. § 11.

11. The real estate of a person deceased, the right or title to which is doubtful or unascertained, by reason of litigation concerning the will of the deceased, or the validity thereof, may be assessed in general terms to the estate of the deceased ; and said tax shall constitute a lien upon the land so assessed, and may be enforced by the sale of the same, or a part thereof, as provided for enforcing other liens for taxes on real estate.

Personal estate, taxed where owner resides.

Ibid. § 12.

6 Pick. 98.

1 Met. 242, 250.

12. All personal estate, within or without this state, shall be assessed to the owner in the city or town where he is an inhabitant, on the first day of May, except as follows :

Stock in trade, &c., employed in other towns.

G. S. 11, § 12.

4 Met. 186.

4 Cush. 543.

10 Cush. 65.

6 Gray, 579.

*First.* All goods, wares, merchandise, and other stock in trade, (except ships or vessels owned by a copartnership,) including stock employed in the business of manufacturing, or of the mechanic arts, in cities or towns within the state, other than where the owners reside, whether such owners reside within or without this state, shall be taxed in those places where the owners hire or occupy manufactories, stores, shops, or wharves, whether such property is within said places, or elsewhere, on the first day of May of the year when the tax is made.

Machinery, where taxed, &c.

G. S. 11, § 12.

See 1862, c. 174.

*Second.* All machinery employed in any branch of manufactures, and belonging to a person or corporation, shall be assessed where such machinery is situated or employed ; and, in assessing the stockholders for their shares in any manufacturing corporation, there shall first be deducted from the value thereof, the value of the machinery and real estate belonging to such corporation.

Horses, &c.

G. S. 11, § 12.

*Third.* Horses, mules, neat cattle, sheep, and swine, kept throughout the year in places other than those where the owners reside, whether such owners reside within or without this state, and horses employed in stages or other vehicles for the transportation of passengers for hire, shall be assessed to the owners in the places where they are kept.

Property of persons under guardianship.

*Fourth.* Personal property belonging to persons under guardianship, shall be assessed to the guardian in the place where

the ward is an inhabitant, unless the ward resides and has his home without the state, in which case it shall be taxed to the guardian in the place where he is an inhabitant.

*Fifth.* Personal property held in trust by an executor, administrator, or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator, or trustee, in the place where such other person resides, if within the state, and if he resides out of the state it shall be assessed in the place where the executor, administrator, or trustee resides, and if there are two or more executors, administrators, or trustees, residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator, or trustee is not an inhabitant of this state, it shall be assessed to the person to whom the income is payable, in the place where he resides.

G. S. 11, § 12.  
2 Gray, 494.

Trust property  
&c.  
Ibid. § 12.  
5 Cush. 93.  
6 Gray, 132.

*Sixth.* Personal property placed in the hands of a corporation or individual as an accumulating fund for the future benefit of heirs or other persons, shall be assessed to such heirs or persons, if within the state, otherwise to the person so placing it or his executors or administrators until a trustee is appointed to take charge of such property, or the income thereof.

Property de-  
posited to accu-  
mulate.  
G. S. 11, § 12.

*Seventh.* The personal estate of deceased persons shall be assessed in the place where the deceased last dwelt. After the appointment of an executor or administrator, it shall be assessed to such executor or administrator until he gives notice to the assessors that the estate has been distributed and paid over to the parties interested therein. Before such appointment it shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed in like manner as though assessed to him.

Property of de-  
ceased persons.  
Ibid.  
5 Pick. 236.  
4 Cush. 1.

13. Property held by a religious society, as a ministerial fund, shall be assessed to the treasurer of the society. If such property consists of real estate, it shall be taxed in the town where it lies; if it consists of personal property, it shall be taxed in the town where such society usually hold their meetings.

Property held  
as a ministerial  
fund.  
G. S. 11, § 13.  
19 Pick. 542.

Personal prop-  
erty mort-  
gaged, &c.  
G. S. 11, § 14.  
10 Met. 334.

14. Personal property mortgaged or pledged shall, for the purposes of taxation, be deemed the property of the party who has the possession.

Partners may  
be jointly taxed  
for stock in  
trade.  
G. S. 11, § 15.  
9 Cush. 298.  
7 Gray, 132.

15. Partners in mercantile or other business, whether residing in the same or different places, may be jointly taxed under their partnership name in the place where their business is carried on, for all the personal property employed in such business, except ships or vessels. If they have places of business in two or more towns, they shall be taxed in each of such places for the proportion of property employed therein. When so jointly taxed each partner shall be liable for the whole tax.

Ships of copart-  
ners assessed  
where owners  
reside.  
G. S. 11, § 16.

16. Ships or vessels owned by a copartnership shall be assessed to the several partners in their places of residence, proportionally to their interests therein.

#### MANNER OF ASSESSING TAXES.

State treasurer  
to send tax  
warrants to  
sheriffs.  
Ibid. § 17.

17. When a state tax is to be assessed, the treasurer shall send his warrants for the assessing thereof, to the sheriffs of the several counties, who shall immediately transmit them to the assessors to whom they are directed.

By what rules  
all taxes to be  
assessed.  
Ibid. § 18.  
12 Met. 178.

18. The assessors shall assess state taxes for which they receive warrants from the treasurer, according to the rules prescribed in this chapter. They shall in like manner assess all county taxes which are duly certified to them, all city or town taxes voted by their places, and all taxes duly voted and certified by school districts therein.

Penalty if as-  
sessors refuse  
to obey war-  
rant.  
In such case  
commissioners  
to appoint.  
G. S. 11, § 19.

19. If the assessors of a city or town neglect to obey a warrant so received from the treasurer, or to assess such a county, town, or district tax, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars; and the commissioners in the respective counties shall forthwith appoint other suitable persons to assess such tax, according to the warrant of the treasurer. The persons so appointed shall take the same oath, perform the same duties, and be liable to the same penalties, as are provided in the case of assessors of towns.

Town, &c., lia-

20. If within five months after the receipt of a warrant from

the state treasurer, or a certificate from the county commissioners requiring the assessment of a tax, the same is not assessed and certified as the law requires, the amount of the tax may be recovered of the city or town where the neglect occurs, in an action of contract by the treasurer of the state or county respectively.

ble for state or county tax not assessed.  
G. S. 11, § 20.

21. Keepers of taverns and boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of an assessor in the place where their house is situated, give information of the names of all persons residing therein and liable to be assessed for taxes. Every such keeper, master, or mistress, refusing to give such information, or knowingly giving false information, shall forfeit twenty dollars for each offence.

Keepers of taverns, &c., to give names of persons taxable.  
Penalty.  
Ibid. § 21.

22. Before proceeding to make an assessment, the assessors shall give seasonable notice thereof to the inhabitants of their respective places, at any of their meetings, or by posting up in their city or town one or more notifications in some public place or places, or by some other sufficient manner. Such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and estates, both real and personal not exempted from taxation.

Assessors to give notice to bring in lists of polls and property.  
Ibid. § 22.  
12 Met. 211.  
5 Cush. 97.  
8 Cush. 55.

23. The assessors shall in all cases require a person bringing in such a list, to make oath that the same is true; which oath may be administered by either of the assessors.

May verify lists by oath of the party.  
G. S. 11, § 23.

24. The assessors of each place shall at the time appointed make a fair cash valuation of all the estate real and personal, subject to taxation therein.

To make cash valuation.  
Ibid. § 24.  
4 Gray, 254.

25. They shall receive as true the list brought in by each individual according to the provisions of this chapter, unless on being thereto required by the assessors, he refuses to answer on oath all necessary inquiries as to the nature and amount of his property.

To receive lists as true, unless, &c.  
G. S. 11, § 25.  
12 Met. 211.  
8 Cush. 64.

26. Any person who in any way directly or indirectly proposes or agrees to an assessment on any specific or limited amount less than he is liable by law to be taxed for, with a view or as an inducement to make any particular place his residence for the purpose of taxation, shall be punished by fine of one

Penalty for agreeing to assessment on limited amount, &c., with view to residence, &c.  
G. S. 11, § 26.

G. S. 11, § 26.   thousand dollars ; and any assessor guilty of making or assenting to any such proposal shall be subject to a like penalty.

Assessors shall   27. They [the assessors] shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate make an estimate when lists are not brought in.   in possession or occupation, as owner or otherwise, of any person who has not brought in such list, and make an estimate thereof at its just value, according to their best information and belief.

Ibid. § 27.  
8 Cush. 63.

To be conclusive unless, &c.   28. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons who have not seasonably brought in lists of their estates, unless they can show a reasonable excuse for the omission.

G. S. 11, § 28.  
5 Cush. 97.  
8 Cush. 63.

State, county, and town taxes in one assessment.   29. The assessors, when they think it convenient, may include in the same assessment their state, county, and town taxes, or any two of them.

G. S. 11, § 29.  
County and city taxes in Boston, how assessed. Chelsea, &c., exempt.  
Ibid. § 30.  
21 Pick. 64.

Proportions to be assessed on polls and property.   30. In the city of Boston, all taxes assessed for city or county purposes may be assessed separately, as county taxes and as city taxes, or under the denomination of city taxes only, as the city council from time to time directs. Chelsea, North Chelsea, and Winthrop shall not be taxed for county purposes.

G. S. 11, § 31.  
1892, 158.

Assessors may add five per cent. for convenience of apportionment.   31. The assessors shall assess upon the polls, as nearly as may be, one sixth part of the whole sum to be raised ; but the whole poll tax assessed in one year upon an individual for town, county, and state purposes, except highway taxes separately assessed, shall not exceed two dollars ; and the residue of such whole sum shall be apportioned upon property, as provided in this chapter.

G. S. 11, § 32.

Assessors to deposit a copy of valuation in office.   32. They may add to the amount of a tax to be assessed, such sum, not exceeding five per cent. thereof, as any fractional divisions of the amount may render convenient in the apportionment.

Ibid. § 33.  
2 Gray, 298.  
See § 55.

What shall be contained in valuation.   33. They shall make a list of the valuation and the assessment thereon, and, before the taxes assessed are committed for collection, shall deposit the same, or an attested copy thereof, in their office, or if there is no office, with their chairman, for public inspection.

34. The first part of the list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed ;

and shall contain, in separate columns, the following particulars, G. S. 11, § 34.  
to wit : — See § 55.

The names of the inhabitants assessed ; and opposite to their names, — The estates of inhabitants. Ibid. § 34. 21 Pick. 64.

The number of polls.

The amount of their poll tax.

The description of their real estate.

The true value of their real estate.

The tax assessed on such real estate.

The description of their personal property.

The true value of their personal property.

The tax on their personal property.

The sum total of each person's tax.

The second part shall exhibit the valuation and assessment of the estates of non-resident owners ; and shall contain in separate columns the following particulars, to wit : — The estates of non-residents. G. S. 11, § 34.

The names of the non-resident owners of the property assessed, or such description of them as can be given.

Their places of abode, if known.

The description of their estate.

The true value of such estate.

The tax thereon.

35. The tax list submitted to the collectors shall be in substance as follows : Form of tax list for collectors. Ibid. § 35. 9 Pick. 97. 2 Gray, 298.

Names.	No. of Polls.	Poll Tax.	Tax on Real Estate.	Tax on Personal Property.	Total.	Time when paid.
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NON-RESIDENTS.

Names.	Places of abode, if known.	Tax.
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36. The assessors or other persons empowered to assess the taxes in a city or town, shall, at the close of said valuation list, subscribe and take the following oath : Valuation list to be sworn to by assessors. G. S. 11, § 36.

“ We, (the assessors, or mayor and aldermen, as the case may be, of \_\_\_\_\_), do hereby solemnly swear that the foregoing list is a full and true list of the names of all persons known to us, who are liable to taxation in \_\_\_\_\_, (here

G. S. 11, § 36. insert the name of the city or town,) during the present year; and that the real and personal estate contained in said list, and assessed upon each individual in said list, is a full and accurate assessment upon all the property of each individual, liable to taxation, at its full and fair cash value, according to our best knowledge and belief."

Penalty on assessors omitting to take oath.  
Ibid. § 37.

37. Any assessor or other person assessing taxes in a city or town, who omits to take and subscribe the oath prescribed in the preceding section, shall be punished by a fine of ten dollars; but the omission to take and subscribe said oath shall not prevent the collection of a tax otherwise legally assessed.

Assessors to commit lists to collectors, &c.  
Ibid. § 38.  
13 Met. 85.  
6 Gray, 387, 502.

38. The assessors shall, within a reasonable time, commit said tax list, with their warrant, to the collector, or if no collector is chosen, to a constable, or if there is no constable, to the sheriff or his deputy, for collection.

Contents and form of warrant.  
G. S. 11, § 39.  
1 Met. 328.  
6 Met. 345.

39. The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes, the times when and the persons to whom he shall pay them in, shall be substantially in the form heretofore used, and need not be under seal.

If warrant is lost, &c., new one may issue.  
G. S. 11, § 40.

40. When a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant.

Discounts.  
Ibid. § 41.

41. Towns, at their annual meeting, and city councils of cities, may allow a discount of such sums as they think expedient to persons making voluntary payment of their taxes within such periods of time as they prescribe. In such case, the collectors shall make such discount accordingly.

Discount rates to be posted up.  
Ibid. § 42.

42. When such discount is allowed, the assessors, at the time of committing their warrant to the collector, shall post up in one or more public places within the city or town, notice of the rates of discount.

Abatements.  
Ibid. § 43.  
9 Met. 205.  
5 Cush. 93.  
7 Cush. 273.  
8 Cush. 65, 66.

43. A person aggrieved by the taxes assessed upon him, may apply to the assessors for an abatement thereof; and, if he makes it appear that he is taxed at more than his just proportion, they shall make a reasonable abatement.

Costs before

44. If legal costs have accrued before making such abate-

ment, the person applying for the abatement shall pay the same.

abatement, &c.  
G. S. 11, § 44.  
See § 48.

45. If the assessors refuse to make an abatement to a person, he may, within one month thereafter, make complaint thereof to the county commissioners by filing the same with their clerk; and if, upon a hearing, it appears that the complaint is overrated, the commissioners shall make such an abatement as they deem reasonable.

If assessors  
refuse to abate,  
&c.  
G. S. 11, § 45.  
6 Pick. 98.  
7 Cush. 273.  
8 Cush. 55.

46. No person shall have an abatement unless he has filed with the assessors a list subscribed by him of his estate liable to taxation, and made oath that it is full and accurate according to his best knowledge and belief. When such list is not filed within the time specified by the assessors for bringing it in, no complaint from the judgment of the assessors shall be sustained by the county commissioners, unless they are satisfied that there was good cause why such list was not seasonably brought in.

No abatement  
unless, &c.  
G. S. 11, § 46.  
4 Pick. 399.  
5 Pick. 451, 498.  
7 Pick. 106.  
21 Pick. 382.  
4 Met. 599.  
11 Met. 339.  
5 Cush. 97.  
6 Cush. 477.  
8 Cush. 63.  
5 Gray, 365.

47. No abatement shall be allowed to a person unless he makes application therefor within six months after the date of his tax bill.

To be applied  
for within six  
months.  
G. S. 11, § 47.

48. A person having an abatement made, shall, if his tax has been paid, be reimbursed out of the treasury of the city or town to the amount of the abatement allowed, together with all charges, except the legal costs provided for in section forty-four.

If tax is paid,  
amount of  
abatement to be  
paid out of town  
treasury.  
Ibid. § 48.

49. Every person whose tax is abated, shall be entitled to a certificate thereof from the assessors, or clerk of the commissioners, or other proper officer.

Party entitled  
to certificate.  
Ibid. § 49.

50. When a person, seven days or more prior to any election, gives notice in writing, accompanied by satisfactory evidence, to the assessors of a city or town, that he was at the time of the last annual assessment of taxes in such place, an inhabitant thereof, and liable to pay a poll tax, and furnishes under oath, a true list of his polls and estate, both real and personal, not exempt from taxation, the assessors shall assess him for his polls and estate in the same manner they would have done if such list had been duly brought in; and the assessors shall, five days at least before any election, deposit with the clerk of the place a list of the persons so assessed. The tax

Assessors to  
assess persons  
applying seven  
days before an  
election.  
Ibid. § 50.  
12 Met. 178.

G. S. 11, § 50. thus assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay it over as specified in his warrant.

Assessors to be responsible only for fidelity, &c.  
Ibid. § 51.  
4 Pick. 399.  
5 Pick. 451, 498.  
7 Pick. 106.  
21 Pick. 382.  
4 Met. 599.  
11 Met. 339.  
4 Gray, 42.  
Pay of assessors.  
G. S. 11, § 52.  
3 Met. 431.

51. The assessors shall not be responsible for the assessment of a tax in a city, town, parish, religious society, or school district, for which they are assessors, when such tax is assessed by them in pursuance of a vote for that purpose, certified to them by the clerk or other proper officer of such city, town, parish, religious society, or school district, except for the want of integrity and fidelity on their own part.

52. Each assessor shall be paid, by his city or town, one dollar and fifty cents a day, for every whole day that he is employed in that service, with such other compensation as the city or town shall allow.

#### REASSESSMENT OF TAXES.

Taxes, invalid, &c., except poll taxes, may be reassessed.  
G. S. 11, § 53.

53. Every tax, except a poll tax, which is invalid by reason of any error or irregularity in the assessment, and which has not been paid, or which has been recovered back, may be reassessed by the assessors for the time being, to the just amount to which, and upon the estate or to the person to whom, such tax ought at first to have been assessed, whether such person has continued an inhabitant of the same city or town or not.

#### ILLEGAL ASSESSMENTS.

Tax to be void to extent of illegal excess.  
Ibid. § 54.  
See G. S. c. 12, § 56.

54. If, through any erroneous or illegal assessment or apportionment of taxes, a party is assessed more or less than his due proportion, the tax and assessment shall be void only to the extent of the illegal excess.

#### VALUATIONS AND RETURNS OF ASSESSORS.

Secretary of state to furnish books to assessors with uniform tables.

55. The secretary of the commonwealth shall furnish to each of the cities and towns in the state, on or before the first day of May in each year, suitable blank books for the use of the assess-

ors of said cities and towns in the assessment of taxes, which books shall contain blank columns numbered from one to twenty-seven, inclusive, with uniform headings for a valuation list, and blank tables for aggregates.<sup>1</sup>

1861, 167, § 1.  
See §§ 33, 34.

56. The assessors in each of the several cities and towns shall enter in the books furnished in accordance with the provisions of the preceding section, the valuation and assessment of the polls and estate of the inhabitants assessed, in the following order:—

Assessors shall  
enter in books  
valuation and  
assessments.  
1861, 167, § 2.

*In column number one.* The names of the inhabitants or parties assessed for polls or estate.

*In column number two.* The number of polls for which any person named in the preceding column is taxable.

*In column number three.* Total amount of cash tax on polls.

*In column number four.* The amount of each person's whole stock in trade, including all goods, wares, and merchandise, at home or abroad, of ratable estate, whether paid for or otherwise.

*In column number five.* A description of all ratable cash assets, viz: Amount of money at interest more than the person assessed pays interest for, including public securities; the amount of money on hand, including deposits in any bank or in any savings bank, which is not exempted by law from taxation; the number of shares of stock which are taxable, with the name of the corporation, in any bank, railroad, insurance, manufacturing, or other incorporated company.

*In column number six.* The true ratable value of the several items enumerated in the preceding column, placed opposite the description of said property or shares.

*In column number seven.* The true value of machinery used in all kinds of manufacturing establishments, including steam-engines, &c., the value of such machinery to be entered opposite the description of the building in which it is used.

*In columns number eight and nine.* The whole number of taxable live stock, including horses, mules, asses, oxen, cows,

<sup>1</sup> See Act of 1861, c. 167, § 1, for the "form" of the returns required.

Assessors' books, to contain what, 1861, 167, §2.

steers, heifers, sheep, and swine; each kind to be stated separately, with the value affixed to each.

*In columns number ten and eleven.* Description of all other ratable personal estate not before enumerated, such as carriages, income, plate, furniture, tons of vessels, &c., with the true value of the same.

*In column number twelve.* The aggregate of each person's ratable personal estate.

*In column number thirteen.* The total tax on each person's personal estate.

*In column number fourteen.* Buildings of all kinds shall be described in the following order:—

Dwelling-houses; barns; shops of all kinds, naming their uses; stores; warehouses; distil-houses; breweries; tanneries and other manufactories of leather; rope-walks; grist-mills; saw-mills; steam and other mills not above enumerated; cotton factories, with the number of spindles and looms used in the same; woollen factories, with the number of sets of cards used in the same; linen factories, with the number of spindles and looms; print works; bleacheries; gas works; paper-mills; card factories; boot and shoe factories; India rubber factories; carriage and car factories; piano-forte and musical instrument factories; sewing-machine factories; chair, pail, tub, and other wooden-ware factories; oil factories; glass factories; all kinds of iron and brass works, and other buildings not above named.

*In column number fifteen.* True value of buildings enumerated in the preceding column placed opposite the description of the same, including water-wheels; such value to be exclusive of land and water power, and of the machinery used in said buildings.

*In columns number sixteen, seventeen, and eighteen.* A description, by name or otherwise, of each and every lot of land assessed, the same placed opposite the name of the person or party to whom it is taxable, with the number of acres or feet in each lot, the number of quartz sand beds, of stone quarries and ore beds, and the true value thereof.

*In columns number nineteen and twenty.* The number of super- Assessors' books, to contain what. 1861, 167, § 2.

*In column number twenty-one.* The aggregate value of each person's taxable real estate.

*In column number twenty-two.* The total tax on real estate.

*In column number twenty-three.* The aggregate cash tax assessed to each person on polls, personal and real estate.

*In columns number twenty-four, twenty-five, twenty-six, and twenty-seven.* The amount assessed for highway tax; on polls; on personal estate; on real estate; and the aggregate of the same.

57. The assessors shall fill up the table of aggregates, by an enumeration of the necessary items included in the list of valuation and assessments required by the preceding section, and shall, on or before the first day of October in each of the first four years of each decade, deposit in the office of the secretary of the commonwealth, an attested copy of the same, containing, —

*First.* The total number of polls.

*Second.* The total tax on polls.

*Third.* The total value of and tax on personal estate. 1862, 215.

*Fourth.* The total value of and tax on real estate. Ibid.

*Fifth.* The total tax for state, county, and town purposes, including highway tax.

*Sixth.* The rate per cent. of total tax.

*Seventh.* The total valuation of the city or town.

*Eighth.* Total number of dwelling-houses assessed.

*Ninth.* Total number of horses assessed.

*Tenth.* Total number of cows assessed.

*Eleventh.* Total number of sheep assessed.

*Twelfth.* The total number of acres of land assessed in the city or town.

The assessors shall make similar returns in the first four years of the last half of each decade; and in every fifth and tenth year of each decade, they shall deposit in the office of the secretary of the commonwealth, on or before the first day of October, a certified copy, under oath, of the assessors' books of those years; and said books thus deposited shall contain an

Subsequent returns to be made by assessors. 1861, 167, § 3.

Returns of  
Assessors.  
1861, 167, § 3.

aggregate sheet properly filled in accordance with the provisions of this act, which shall be in like manner certified by the assessors; and in every fifth and tenth year of each decade, the secretary shall furnish duplicate copies of blank books to the cities and towns for the foregoing purpose; *provided, however*, that in the case of the city of Boston, the returns, required by this section to be deposited in the office of the secretary, may be thus deposited on or before the first day of November, in the several years respectively.

Secretary shall  
furnish books,  
&c., and cause  
returns to be  
printed.  
Ibid. § 4.

58. The secretary of the commonwealth shall cause to be printed and bound in the books to be furnished for the use of the assessors, a copy of this act,<sup>1</sup> and such certificates as are required by the same and by the General Statutes to be signed by the assessors, together with such explanatory notes as may by him be deemed expedient, for the purpose of securing uniformity of returns under the several headings; and he shall compile and cause to be printed annually, for the use of the legislature, the aggregate returns from the cities and towns in the commonwealth, arranged by counties, so as to exhibit the total valuation of the towns, cities, counties, and state.

Penalty for neg-  
lect of assess-  
ors.  
Ibid. § 5.

59. If the assessors of any city or town shall neglect to comply with the requirements of sections fifty-six and fifty-seven, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars.

#### RETURNS OF CORPORATIONS.

Certain corpo-  
rations to make  
returns of  
stocks, &c., to  
assessors, and  
register names,  
&c.  
G. S. 68, § 20.  
1861, 120, § 1.  
See §§ 65, 66, 67.

60. Banks, insurance companies, corporations mentioned in chapters sixty and sixty-one of the General Statutes; railroad, horse railroad, bridge, turnpike, canal, and aqueduct corporations, shall register the names and residences of their stockholders, and all changes therein of which they are notified; shall issue no certificate to a purchaser until he informs the corporation of his actual place of residence; and shall annually, between the first and tenth days of May, return by mail or otherwise to the

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<sup>1</sup> Act of 1861, c. 167, it being §§ 55-59 in the text.

assessors of each city or town in the state in which any shareholder in the corporation resided on the first day of said month, the name of each shareholder so residing, with the number of shares belonging to him on said day, and the par and cash market value of such shares; and shall also state the whole amount of the capital stock of the corporation, and the amount, at the value at which it was last assessed, of its real estate subject to assessment on the first day of May, and of machinery as last assessed to it in the city or town where its place of business is situated. G. S. 68, § 20.

61. The provisions of the foregoing section shall be applicable to and deemed to include all corporations whose stockholders are subject to taxation for the shares of the capital stock they own therein. Certain corporations to make returns, 1863, 119, § 1.

62. Banks and insurance companies shall at the same time and in like manner make return to the assessors of each city and town in the state in which any borrower of money on collateral security resided on the first day of May in that year; of the number of shares of corporate stock of all kinds then held by them as collateral security for the debt or liability of such person, giving the name of the person, the number of the shares, the denomination of the stocks, and the par and cash market value thereof, if known. Banks and insurance companies to return collaterals. G. S. 68, § 21.

63. If a corporation refuses or neglects to make the returns required by sections sixty and sixty-two, or makes a false return, it shall forfeit for every offence a sum not less than fifty nor more than one thousand dollars, to the use of the city or town in which the shareholder resides, to be recovered in an action of tort. Penalty for neglect, or false return. Ibid. § 22.

64. If a shareholder fraudulently transfers a share in either of the corporations mentioned in section sixty, to avoid taxation, he shall forfeit to the use of the city or town in which he resides one half of the par value of the shares thus transferred, to be recovered in an action of tort; and if he wilfully misinforms the corporation respecting his name or place of residence, or having changed his residence to another city or town, in this state, wilfully omits to give immediate notice thereof to the cor- Penalty for transfer to avoid taxation, &c. Ibid. § 23.

G. S. 68, § 23. poration, he shall forfeit a sum not exceeding one hundred dollars.

Corporation to make additional returns to assessors. 1863, 247, § 1. 65. In addition to the returns required by sections sixty and sixty-two, to be made to assessors of cities and towns, banks, insurance companies, corporations mentioned in chapters sixty and sixty-one of the General Statutes, railroad, bridge, turn-pike, canal, and aqueduct corporations, shall annually, between the first and tenth days of May, return by mail or otherwise to the assessors of every city and town in the commonwealth, a complete list of their shareholders, with their place of residence, the number of shares belonging to each on the first day of May, and the par and cash market value of such shares; and shall also state the whole amount of the capital stock of the corporation, and the amount at the value at which it was last assessed, of its real estate subject to assessment on the first day of May, and of machinery as last assessed to it in the city or town where its place of business is situated. The returns for the present year may be made on or before the twentieth day of May.

Assessors to transmit certain returns to other towns. 1862, 86, § 1. 66. Whenever the assessors of any city or town shall receive returns from any corporation, under the provisions of chapter sixty-eight of the General Statutes, concerning the property of any shareholder who has removed from such city or town, such assessors shall send a copy of such returns to the assessors of the city or town in which said shareholder shall then reside, if known to such assessors, and within this commonwealth.

Corporations to return value of real estate and machinery. 1862, 174, § 1. See §§ 60, 65. 67. All corporations which are by law required to make returns to the assessors of each town or city within the state in which any stockholder therein may reside, shall return, in addition to the cash market value of the shares of said corporation, on the first day of May, the proportionate amount per share which its real estate and machinery, if any, was last assessed, and the difference, only, between such proportionate amount per share assessed on its real estate and machinery, if any, and the cash market value, shall be taxed to the stockholder.

## INTEREST.

68. In all cases where a time shall be fixed by any town or city within which taxes assessed therein shall be paid, interest, at the rate of six per cent. in all cases, or at a rate not exceeding one per cent. per month, if at the meeting when money is raised or granted any town, or the city council of any city shall so vote, shall be charged upon all taxes which remain unpaid from and after the time so fixed until the same shall be paid; and such interest shall be added to and be considered a part of such taxes; and all provisions of law relative to the collection of the original taxes, shall likewise apply to the interest charged thereon under this act.

Cities may charge interest on certain taxes.  
1862, 146, § 1.

## POWERS OF CITY COUNCIL TO ASSESS TAXES, AND FOR WHAT.

69. The city council shall have power, from time to time, to lay and assess taxes for all purposes for which towns are by law required or authorized to assess and grant money,<sup>1</sup> and also for all purposes for which county taxes may be levied and as-

Powers of the city council in relation to the assessment of city and county taxes.

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<sup>1</sup>The city council are the agents and trustees of the inhabitants of Boston, with a limited authority; they can perform no act in the execution of their trust, unless warranted by some general or special law of the commonwealth, either in express terms or by reasonable inference. The general authority of towns to raise money by the assessment of taxes on the inhabitants, was given by the Statute of 1785, c. 75, § 7, "for the settlement, maintenance, and support of the ministry, schools, the poor, and other necessary charges arising within the same town," the most of which provision was re-enacted in the Rev. Stats. c. 15, § 12, and subsequently with additions in the Gen. Stats. c. 18, § 10.

The only difficulty in the construction of this provision has been as to what are "other necessary charges," for which towns are authorized to raise money. Upon this point there have been several decisions. In the case of *Stetson v. Kempton*, 13 Mass. 272, it was held, that towns have no authority in time of war and hostile invasion, to raise money to give additional wages to the militia and for other purposes of defence. But the court say, that the erection of public buildings for the accommodation of the inhabitants, such as town houses to assemble in, and market-houses for the sale of provisions, may be a proper town charge, and may come within the fair meaning of the term *necessary*, for these may be essential to the comfort and convenience of the

1821, 110, § 15.  
1822, 85.  
1854, 448, § 36.  
See *ante*, p. 15,  
§ 36.

Same rules to be  
observed, as in  
relation to town  
taxes.

Charter, *ante*,  
p. 16, § 36.

1821, 110, § 15.

City council  
may provide for  
assessment and  
collection of  
taxes.

Charter, *ante*,  
pp. 15, 16, §§ 36,  
37.

3 Cush. 567.

May elect as-

essed, so long as other towns in the county shall not be liable to taxation for county purposes. But in the assessment and apportionment of all such taxes upon the polls and estates of all persons liable to contribute thereto, the same rules and regulations shall be observed as are now established by the laws of this commonwealth, or may be hereafter enacted, relative to the assessment and apportionment of town taxes. The said city council shall also have power to provide for the assessment and collection of such taxes and to make appropriations of all public moneys, and provide for the disbursement thereof, and take suitable measures to insure a just and prompt account thereof; and for these purposes, may either elect such assessors and assistant assessors as may be needful, or provide for the

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citizens. But it cannot be supposed that the building of a theatre, a circus, or any other place of mere amusement, at the expense of the town, could be justified under the term *necessary town charges*. Nor could the inhabitants be lawfully taxed for the purpose of raising a statue or a monument, these being matters of taste, and not of necessity; unless in populous and wealthy towns, they should be thought suitable ornaments to buildings or squares, the raising and maintenance of which are within the duty and care of the governors or officers of such towns. In *Allen v. Inhabitants of Taunton*, 19 Pick. 485, it was held that a town is authorized to appropriate money for the repair of fire engines, used for the purpose of extinguishing fires therein, whether they belong to the town or were purchased by private subscription; and in the case of *Hardy v. Inhabitants of Waltham*, 3 Met. 163, it was held, that a town has authority to appropriate money for the construction of reservoirs for water to supply fire engines. In the case of *Spaulding v. City of Lowell*, 23 Pick. 71, it was held, that cities and towns in this commonwealth, by virtue of their general powers, have authority in their corporate capacity, to build a market-house, to appropriate money therefor, and to assess the same upon the inhabitants. "To bring any particular subject," the court remark, "within this description of necessary town charges, it must appear to be money necessary to the execution of some corporate power, the enjoyment of some corporate right, or the performance of some corporate duty, as established by law, or *long usage*."

In the case of *French v. The Inhabitants of Quincy*, 3 Allen, 9, it was held that a town may erect a town house of sufficient capacity for all the business which it may have occasion to do in such a building, and may in its erection make suitable provision for its prospective wants; and if the building contains rooms not wanted for the time being, the town may let them, or allow them to be used gratuitously; and the condition of a deed of land to the town, which provides that the same "shall not be used for any other purpose than a place for a town house for the inhabitants," is not broken by the erection thereon of

appointment or election of the same, or any of them, by the mayor and aldermen, or by the citizens, as in their judgment may be most conducive to the public good, and may also require of all persons entrusted with the collection, custody, or disbursement of public moneys, such bonds, with such conditions and such sureties as the case may in their judgment require.

sessors, &c., or provide for same. Charter, see ante, p. 16, § 35. May require bonds. *Ibid.*

70. Cities and towns may, at legal meetings, grant and vote such sums as they judge necessary for the following purposes: —

Cities and towns may grant money for certain purposes. G. S. 18, § 10. 13 Mass. 272. 6 Pick. 101. 12 Pick. 227. 19 Pick. 485. 21 Pick. 64. 23 Pick. 71. 3 Met. 163.

For the support of town schools;

For the relief, support, maintenance, and employment of the poor;

For laying out, discontinuing, making, altering, and repair-

a town house, with a hall in the second story, which has been used for miscellaneous purposes, and rooms on the ends that have been used for stores.

A town has no authority to raise money to aid in the construction of a road which by law is to be made at the expense of the county, and consequently a tax laid by the town for the purpose of collecting the money is illegal and void. A vote by a town appointing a committee to appropriate money for constructing such road, is an illegal and void act; and a contract for constructing it entered into by the committee in behalf of the town, will not be binding upon the town. *Parsons v. Inhabitants of Goshen*, 11 Pick. 396. A town has authority to provide for the support of a public clock, and to assess the expense thereof upon the inhabitants of the town. *Willard v. Inhabitants of Newburyport*, 12 Pick. 227. A town is authorized to indemnify its officers, against any liability which they may incur in the *bond fide* discharge of their duties, although it turn out that they have exceeded their legal rights and authority. *Nelson v. Milford*, 7 Pick. 18; *Brancroft v. Lynnfield*, 18 Pick. 566.

By the Act of 1847, c. 37, re-enacted in Gen. Stats. c. 18, § 79, whenever any city or town shall have voted to raise by taxation, or by pledge of its credit, or to pay over, from moneys in its treasury, any sum or sums of money, for any other purpose or purposes than those for which it may have the legal right and power so to do, the supreme judicial court is authorized to interfere and prevent the same, upon the suit or petition of any ten inhabitants of such city or town who are liable to be taxed therein. See 3 Cush. 530; 10 Cush. 252; 1 Allen, 103.

In 1861, 1862, and 1863, the legislature empowered towns to raise money for the payment of bounties to volunteers, aid to their families, and to protect the town from attacks from the sea. See *State Aid*, ante, p. 670. The Act of 1861, c. 165, (§ 71, in the text,) authorizes taxation for armories, and celebration of holidays, and for other purposes.

10 Met. 508.  
3 Cush. 530.  
10 Cush. 252.  
4 Gray, 502.  
3 Allen, 9.

ing highways and town-ways, and for labor and materials to be used thereon ;

For procuring the writing and publishing of their town histories ;

For burial-grounds ;

For encouraging the destruction of noxious animals ;

For all other necessary charges arising therein.

Cities may appropriate money for certain purposes.  
1861, 165, § 1.

71. Any city, by vote of the city council thereof, in addition to the sums heretofore authorized by law to be raised and appropriated, may appropriate any funds in its treasury, or raise money by taxation, and appropriate the same for the providing of armories for the use of military companies, for the celebration of holidays, and for other purposes of a public nature ; *provided*, that such appropriations shall be made by vote of two thirds of the members of each branch of the city council present, and voting by yea and nay vote, and that the amount of such appropriations made by any city, in any one year, shall not exceed one fiftieth of one per cent. of its valuation for the same year.

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#### STATUTES.

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| 1. Collectors to collect taxes.  | 10. Seizure of shares, how made.                                 |
| 2. They may complete collections though term expire.                     | 11. Sales of shares seized, how made.                            |
| 3. Demand to be made.  | 12. Surplus to be returned to owner.                             |
| 4. When credit doubtful, taxes may be collected forthwith.               | 13. After fourteen days, party may be imprisoned.                |
| 5. Persons claiming abatement must produce certificate. Liable to costs. | 14. Copy of warrant, &c., to be left with jailer.                |
| 6. Errors in names not to defeat collection.                             | 15. Persons imprisoned for non-payment of taxes, how discharged. |
| 7. Distress and sale to pay taxes, except, &c.                           | 16. Collectors, when liable to pay tax, &c.                      |
| 8. Distress, how long kept, how advertised and sold.                     | 17. They may demand aid. Penalty.                                |
| 9. Sale may be adjourned once.   | 18. Persons removing from collector's precinct without paying.   |
|  | 19. Remedy if persons remove, &c., without paying.               |

20. Remedy against executors and administrators.
21. Remedy against persons who are not owners of real estate taxed to them.
22. Taxes to be lien on real estate for two years, &c.
23. Taxes reassessed to be a lien, unless, &c.
24. Resident mortgagee of real estate, when to be called upon for taxes.
25. When non-resident appoints attorney, demand how made.
26. When made, collector to wait two months.
27. Affidavit of collector, &c. Evidence of demand on attorney.
28. Sales of real estate, how advertised.
29. Contents of advertisement.
30. Notices, how posted.
31. When name of place has been changed.
32. Affidavit of publishing and posting notifications to be evidence, if recorded.
33. Sale by auction of sufficient, &c.
34. Collector may adjourn sale not exceeding seven days in whole.
35. Deed to be given to purchaser, subject, &c. When to be recorded.
36. Owner may redeem within two years, &c.
37. How redeemed when purchaser cannot be found, &c.
38. Duty of treasurer.
39. Mortgagee may pay taxes on real estate in certain cases.
40. Shall pay such taxes upon taking possession. Entitled to deed on tender.
41. Entitled to receipt for such taxes paid to collector. May tack same to mortgage.
42. Supreme judicial court to have equity powers.
43. When tax list, &c., is committed to sheriff, &c.
44. Sheriff's fees for collecting.
45. When treasurers are made collectors, how to proceed.
46. Collectors to exhibit accounts every two months, if required.
47. Penalty.
48. Collectors to be credited with abatements, &c.
49. Deficiency in state or county tax, how supplied.
50. Same, when collectors neglect to pay.
51. Remedy for collector's neglect.
52. If collector becomes insane, &c., selectmen may remove him.
53. Tax list of deceased collector, how to be completed. Temporary collector.
54. If collector dies, list to be delivered to selectmen.
55. Compensation.
56. Taxes paid to collector, when recovered back.
57. At sale of real estate for taxes, collector may purchase for town if no other sufficient bid is made.
58. Deed in such case, and rights of town thereunder.
59. Where purchaser at sale fails to pay within ten days, conveyance to be made to town.
60. Deeds to town to be held by treasurer. Towns may make regulations for sale, &c., of estates conveyed to them.
61. Collector to be allowed amount of tax and cost in settlement with town.
62. Collector's deed to contain special warranty, and town to refund amount paid, &c., in case of error, &c.
63. If estate conveyed to town is not redeemed in two years, town may sell again on giving notice, &c.; application of proceeds.
64. Taxes to be assessed on estates conveyed to town, and deducted out of proceeds of final sale.
65. Persons committed for non-pay-

ment of taxes may take poor debtor's oath.

66. Collector's fees.
67. In distribution of insolvent estates, county, city, and town taxes entitled to same priority as state taxes.

SPECIAL LAWS RELATING TO THE COLLECTION OF TAXES IN BOSTON.

68. City treasurer to be collector of taxes. May appoint deputies who shall give bonds.
69. Treasurer, &c., may collect taxes outstanding when he was chosen.
70. Treasurer may issue his warrant for part of the rates to his deputies.
71. Power of distraining for taxes how to be exercised.
72. Same subject.

ORDINANCE.

1. Assessors to be chosen annually.
2. Committee to nominate assessors.
3. Assistant assessors to be chosen.
4. Assessors, &c., may be removed; vacancies to be filled.
5. Organization of assessors.
6. Organization of assessors and assistant assessors.

7. Secretary to keep records of both boards.

8. Services of assessors, &c., to be certified.
9. Joint committee on the assessors' department to be appointed.
10. Duties of assistant assessors.
11. Chairman or other assessors to remain in assessors' room during office hours.
12. Abatement to be recorded.
13. Assessors to deliver tax bills to the treasurer on or before October 1.
14. How taxes shall be collected.
15. List of estates sold to be kept, &c.
16. Assessors may transfer taxes on real estate to the owner.
17. Real estate to be assessed to the owner.
18. Seventeen assessors to be chosen till 1865.
19. Committee to nominate assistant assessors to be chosen.
20. Four assistant assessors to be chosen for wards 2, 4, 11, and 12.
21. Repeal (or suspension) of former ordinances. Revival of ordinance of 1857 after 1865.

Collectors to collect taxes.  
G. S. 12, § 1.

1. Every collector of taxes, constable, sheriff, or deputy sheriff, receiving a tax list and warrant from the assessors, shall proceed to collect the taxes therein mentioned, according to the warrant.

To complete collections though term expire.  
Ibid. § 2.  
Demand to be made.  
Ibid. § 3.  
1 Met. 328.

2. The collector shall, unless removed from office as hereinafter provided, complete the collection of taxes committed to him, although his term of office expires before such completion.

3. Collectors shall, before distraining the goods of a person for his tax, demand payment thereof from such person, either personally or at his usual place of abode, if to be found within their precincts.

When credit

4. When the credit of a person taxed is considered doubtful

by the assessors, they may order the collector forthwith to compel payment by distress or imprisonment, whether the tax is made payable immediately, at a future day, by instalments, or otherwise.

5. If a person claims the benefit of an abatement, he shall exhibit to the collector demanding his taxes, a certificate of such abatement, from the assessors or other proper officer, as provided in chapter eleven of the General Statutes; and shall be liable to pay all costs and officers' fees incurred before exhibiting such certificate.

doubtful, taxes may be collected forthwith.  
G. S. 12, § 4.

Person claiming abatement must produce certificate.  
Liable to costs.  
Ibid. § 5.  
See *ante*, p. 735, § 40.  
9 Met. 504.

6. If, in the assessors' lists or in their warrant and list committed to the collectors, there is an error in the name of a person taxed, the tax assessed to him may be collected of the person intended to be taxed, if he is taxable and can be identified by the assessors.

Errors in names not to defeat collection.  
G. S. 12, § 6.  
6 Met. 474.  
7 Gray, 127.

7. If a person refuses or neglects to pay his tax, the collector shall levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this commonwealth, and excepting the following goods:

Distress and sale to pay taxes, except, &c.  
G. S. 12, § 7.  
9 Met. 504.  
11 Cush. 338.  
7 Gray, 133.

The tools or implements necessary for his trade or occupation; beasts of the plough necessary for the cultivation of his improved lands; military arms, utensils for house-keeping necessary for upholding life, and bedding and apparel necessary for himself and family.

8. The collector shall keep the goods distrained, at the expense of the owner, for four days at least, and shall, within seven days after the seizure, sell the same by public auction, for payment of the tax and charges of keeping and sale, having given notice of the sale by posting up a notification thereof in some public place in the city or town, forty-eight hours at least before the sale.

Distress, how long kept, how advertised and sold.  
G. S. 12, § 8.  
1 Met. 328.  
13 Met. 85.  
11 Cush. 338.

9. The collector may once adjourn such sale for a time not exceeding three days; he shall forthwith give notice of such adjournment, by posting a notification at the place of sale.

Sale may be adjourned once.  
G. S. 12, § 9.

10. The seizure of a share or other interest in a corporation may be made by leaving with any officer of the corporation,

Seizure of shares, how made.

G. S. 12, § 10.

with whom a copy of a writ may by law be left when the share of a stockholder is attached on mesne process, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the tax which the stockholder is to pay, and that, upon his neglect or refusal to pay, the collector has seized such share or interest.

Sales of shares seized, how made.

Ibid. § 11.

4 Cush. 10.

11 Cush. 333.

11. The sale of such share or interest shall be made in the manner prescribed by law for the sale of goods by collectors of taxes in like cases, and also subject to the provisions of sections forty-six and forty-seven of chapter one hundred and thirty-three of the General Statutes, respecting sales on executions.

Surplus to be returned to owner.

G. S. 12, § 12.

5 Gray, 530.

12. If the distress or seizure is sold for more than the tax and charges of keeping and sale, the collector shall return the surplus to the owner, upon demand, with an account in writing of the sale and charges.

After fourteen days, party may be imprisoned.

G. S. 12, § 13.

13 Met. 85.

2 Gray, 298.

7 Gray, 133.

13 Gray, 93.

13. If a person refuses or neglects for fourteen days after demand to pay his tax, and the collector cannot find sufficient goods upon which it may be levied, he may take the body of such person and commit him to prison, there to remain until he pays the tax and charges of commitment and imprisonment, or is discharged by order of law.

Copy of warrant, &c., to be left with jailer.

G. S. 12, § 14.

4 Allen, 5.

14. When the collector commits a person to prison, he shall give the keeper thereof an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the sum which such person is to pay as his tax, with the cost of taking and committing him, and that upon his having neglected payment for fourteen days, or otherwise, as the case may be, and for want of goods whereof to make distress, he has taken his body.

Persons imprisoned for non-payment of taxes, how discharged.

G. S. 12, § 15.

See G. S. c. 124.

1862, 183, § 9.

See *post*, p. 761, § 65.

15. When a person committed to prison for the non-payment of taxes is unable to pay the same, he shall be entitled to his discharge in like manner as persons committed on execution. The notice required in such case to be given to the creditor, may be given to either of the assessors or the collector by whom the party was committed. And the assessors and collector, or any of them, may appear and do all things which a creditor might do in case of arrest on execution.

16. If such person is discharged, the collector shall be liable to pay the tax with the charges of imprisonment, unless he arrested and committed the party within one year after the tax was committed to him to collect, or unless he is exonerated therefrom by the city, town, or parish, to which the tax is due.

Collectors,  
when liable to  
pay, &c.  
G. S. 12, § 16.  
3 Met. 152.

17. A collector when resisted or impeded in the exercise of his office, may require any suitable person to aid him therein, and if such person refuses to render such aid, he shall forfeit a sum not exceeding ten dollars.

Collectors may  
demand aid.  
Penalty.  
G. S. 12, § 17.

18. When a person, after the assessment of a tax upon him, removes out of the precinct of the collector without paying his tax, the collector may demand payment thereof wherever such person is found; and in default of payment the collector may forthwith proceed to collect the tax by making a distress, or by commitment of such person to the prison of the county where he is found; or the collector may issue his warrant to the sheriff of the county or his deputy, or to any constable of the place, where such person is found, directing them to distrain the property or take the body of such person, and to proceed therein, in like manner as required of collectors in like cases.

Persons remov-  
ing from collec-  
tor's precinct,  
without paying.  
Ibid. § 18.

19. When a person taxed removes as aforesaid, or dies, or neglects to pay his tax for one year after it is committed to the collector, or being an unmarried woman, marries, before payment of the tax, the collector may, in his own name, maintain an action of contract therefor in like manner as for his own debt, and he may for that purpose in like manner have a process of foreign attachment against any trustee of such person.

Remedy if per-  
sons remove,  
&c., without  
paying.  
G. S. 12, § 19.  
6 Mass. 44.  
23 Pick. 235.  
8 Met. 393.

20. When a tax is assessed upon the personal estate of a deceased person, the collector may maintain an action of contract therefor in his own name, as for his own debt, against the executor or administrator; and if a tax is so assessed before the appointment of an executor or administrator, he may enforce it against the estate and its representative after such appointment, in like manner as if the assessment had been made subsequently thereto.

Remedy against  
executors and  
administrators.  
G. S. 12, § 20.

21. When a person is taxed for real estate in his occupation, but of which he is not the owner, the collector, after

Remedy against  
persons who are  
not owners of

the real estate  
taxed to them.  
G. S. 12, § 21.

demand of payment, may levy the tax by distress and sale of the cattle, sheep, horses, swine, or other stock or produce, of such estate, belonging to the owner thereof, which within nine months after such assessment is committed to him shall be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; but such demand need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months.

Taxes to be lien  
on real estate  
for two years,  
&c.  
Ibid. § 22.  
7 Pick. 15.  
2 Gray, 185.

22. Taxes assessed on real estate shall constitute a lien thereon for two years after they are committed to the collector; and may with all incidental costs and expenses be levied by sale thereof, if the tax is not paid within fourteen days after a demand of payment made either upon the person taxed or upon any person occupying the estate; but the collector may sell real estate for taxes after two years have elapsed, unless the estate has been alienated in the mean time.

Taxes reass-  
essed, to be a  
lien, unless, &c.  
G. S. 12, § 23.

23. Taxes reassessed on real estate shall constitute a lien thereon from the time they are committed to the collector, unless the estate has been alienated between the first and second assessments; and may be levied as provided in the preceding section.

Resident mort-  
gagee of real  
estate, when to  
be called upon  
for taxes.  
Ibid. § 24.

24. If a mortgagee of real estate, situated in the place of his residence, previously to the assessment of a tax, gives written notice to the clerk of such place that he holds a mortgage thereon, with a description of the estate, the collector before proceeding to sell it for non-payment of taxes shall demand payment of said taxes of the mortgagee, as provided in section twenty-two.

When non-resi-  
dent appoints  
attorney, de-  
mand how  
made.  
Ibid. § 25.

25. If a mortgagee or non-resident owner of real estate, previously to the assessment of a tax, gives a written authority to some inhabitant of the place as his attorney, to pay the taxes imposed on such estate, and the authority is filed with, or recorded by, the clerk of the place, the demand of payment shall be made upon such attorney before the estate is sold; otherwise, no demand need be made of payment of taxes assessed on the real estate of non-resident owners.

26. When a demand is made upon the attorney under the preceding section, the collector shall not advertise the sale of the lands, until two months from the time of such demand.

When made, collector to wait two months.  
G. S. 12, § 26.

27. The affidavit of a disinterested person, or the collector, who makes a sale of land for the payment of taxes, taken before a justice of the peace and recorded by the clerk of the place where the land lies, before a sale is made, and stating the demand of payment of the tax, the person of whom, and the time and manner in which, it was made, shall be competent evidence of the demand.

Affidavit of collector, &c., evidence of demand.  
Ibid. § 27.

28. The collector shall give notice of the time and place of sale of real estate taken for taxes, by an advertisement thereof three weeks successively in some newspaper of the county where the real estate lies, if there is such newspaper, and if not, then in a newspaper printed in an adjacent county; the last publication to be at least one week before the time of sale.

Sales of real estate, how advertised.  
Ibid. § 28.  
1862, 183, § 7.  
See § 35.  
13 Gray, 77.

29. The advertisement shall contain a substantially accurate description of the several rights, lots, or divisions, of the estate to be sold, the amount of the tax assessed on each, the names of all owners known to the collector, and the taxes assessed on their respective lands.

Contents of advertisement.  
G. S. 12, § 29.  
4 Cush. 265.  
7 Cush. 503.

30. The collector shall, three weeks before the sale, post a notice similar to that required by the two preceding sections in some convenient and public place in his precinct, and a like notice on the premises by him advertised to be sold, if any part thereof is bounded by a street, lane, court, or highway.

Notices, how posted.  
G. S. 12, § 30.

31. When real estate to be sold under the provisions of this chapter, is situated in a place the name of which has been changed by law within three years next preceding the sale, the collector shall in his advertisement and notices of the sale designate such place by its former and present name.

When name of place has been changed.  
Ibid. § 31.

32. The affidavit of a disinterested person, taken before a justice of the peace, of the posting and publishing notifications of the sale of real estate by a collector or other officer for payment of taxes, made upon one of the original advertisements, or a copy thereof, and filed and recorded in the registry of deeds

Affidavit of posting and publishing to be evidence, if recorded.  
Ibid. § 32.

G. S. 12, § 32.

Sale by auction  
of sufficient, &c.  
Ibid. § 33.

13 Gray, 77.  
4 Allen, 535.  
See 1862, c. 183,  
post. p. 750,  
§§ 57-66.

Collector may  
adjourn sale,  
&c.

G. S. 12, § 34.  
See § 57.  
1862, 183.

Deed to be given  
to purchaser,  
subject, &c.

G. S. 12, § 35.  
1862, 183, § 2.  
See §§ 58, 63.

When deed to  
be recorded.  
G. S. 12, § 35.  
2 Gray, 185.

Owner may re-  
deem within  
two years, &c.  
G. S. 12, § 36.  
1862, 183.  
See §§ 40, 63.

of the county or district where the land lies, within six months after the sale, shall be competent evidence of such notice.

33. If the taxes are not paid, the collector, at the time and place appointed for the sale, shall sell by public auction, so much of the real estate, or the rents and profits of the whole estate for such term of time, as shall be sufficient to discharge the taxes and necessary intervening charges; or he may at his option sell the whole or any part of the land; and after satisfying the taxes and charges, he shall upon demand pay the residue of the proceeds of the sale, if any, to the owner of the estate.

34. The collector may adjourn his sale from day to day not exceeding seven days in the whole; and he shall give notice of every such adjournment by a public declaration thereof, at the time and place previously appointed for the sale.

35. The collector shall execute and deliver to the purchaser a deed of the real estate, or rents and profits sold; which deed shall state the cause of sale, the price for which the estate or rents and profits were sold, the name of the person on whom the demand for the tax was made, the places in the city or town where the notices were posted, the newspaper in which the advertisement of such sale was published, and the place of residence of the grantee; and if the real estate has been sold, shall convey, subject to the right of redemption provided for in the following section, all the right and interest which the owner had therein at the time when the same was taken for his taxes. Such deed to be valid shall be recorded within thirty days from the day of sale.<sup>1</sup>

36. The owner of real estate sold for payment of taxes, or his heirs or assigns, may, within two years from the day of sale, redeem the estate sold, by paying or tendering to the purchaser, or his heirs or assigns, the sum paid by him, with ten per cent.

<sup>1</sup> A tax title under Rev. Stats. c. 8, §§ 28, 29, (§ 33 in the text,) is not valid unless it appears by the collector's deed or otherwise that the land was so divided that no greater portion thereof was sold than was necessary to satisfy the tax and intervening charges, or that it could not be conveniently divided to that extent. *Crowell v. Goodwin*, 4 Allen, 535.

interest, and all necessary intervening charges; and when the rents and profits are sold for payment of taxes, the same may be redeemed at any time within two years in the manner provided for the redemption of rents and profits taken on execution. And in the following cases real estate so sold may be redeemed, by any person having such title thereto that he might have recovered the same if no such sale had been made, at any time within two years after he has actual notice of the sale: —

*First.* When no person is named in the tax list as the owner or occupant of the premises, they being taxed as belonging to persons unknown;

*Second.* When the person who is named in said list is merely a tenant or occupant of the premises, and not the rightful owner thereof;

*Third.* When there is any error in the name of the person intended to be taxed;

*Fourth.* Mortgagees of record.

37. If upon reasonable search the purchaser of real estate sold for non-payment of taxes cannot be found in the place of which he is described in the collector's deed as resident, the owner of the estate may redeem it as provided in the preceding section, on paying to the treasurer of the place in which it is situated, the amount which he would be required to pay to the purchaser; and the affidavit of any disinterested person of the making such search, taken before a justice of the peace and filed in the registry of deeds for the district or county in which the land is situated, within ninety days from the completion of the search, shall be competent evidence of the facts therein stated.

How redeemed  
when purchaser  
cannot be found,  
&c.  
Ibid. § 37.

38. Such treasurer shall receive the money and give to the person paying it a certificate of such payment, specifying the estate on which the tax was originally assessed. The certificate may be recorded in the registry of deeds, with a note of reference from such record to the collector's deed; and, when so recorded, shall have the effect to release and discharge all right and title acquired under the collector's deed. The treasurer shall hold all money received by him under the preceding sec-

Duty of treasurer.  
Ibid. § 38.

G. S. 12, § 38. tion, for the use and benefit of the persons entitled thereto ; and shall pay it over on reasonable demand.

Mortgagee may pay taxes on real estate in certain cases. Ibid. § 39. See § 36.

39. After proceedings have been commenced for the sale of real estate for a tax assessed thereon, and before the sale is made, the holder of any mortgage thereon may pay such tax with all intervening charges and expenses ; and when the owner of real estate for three months after demand has neglected to pay such a tax, and the collector has made demand therefor upon a holder of a mortgage thereon, such holder may in like manner pay such tax, charges, and expenses.

He shall pay such taxes upon taking possession. Entitled to deed on tender. G. S. 12, § 40. See § 36.

40. The holder of a mortgage, upon taking possession of real estate thereunder, shall be liable to pay all taxes due thereon, and the expenses of any sale for taxes that has been commenced or taken place ; to be recovered of him in an action of contract by the collector, or, when a sale has taken place, by the purchaser ; and upon tender by the mortgagee to the purchaser, within the time provided for owners of real estate to make tender in section thirty-six, of the sum paid by him, with ten per cent. interest and all necessary intervening charges, such purchaser shall, at the expense of the mortgagee, execute and deliver to him a valid deed of assignment of all interest acquired by virtue of the tax sale.

Mortgagee entitled to receipt for such taxes paid to collector. May tack same to mortgage. G. S. 12, § 41.

41. For all sums paid to a collector by the holder of a mortgage under either of the two preceding sections, the collector shall upon demand give him a receipt therefor, duly acknowledged ; and such sums shall be added to and constitute part of the principal sum of the mortgage ; and the mortgage shall not be redeemed, without the consent in writing of the holder, until such sums and interest thereon are paid ; and such receipt recorded in the registry of deeds for the district or county where the land lies, within thirty days from its date, shall be notice to all persons of the payment of such sums and the lien upon the estate therefor.

Supreme judicial court to have equity powers. Ibid. § 42. 10 Met. 101.

42. In all cases of sale of real estate for the payment of taxes assessed thereon, the supreme judicial court shall have equity powers, if relief is sought within five years from the sale.

43. When the tax list and warrant of the assessors is committed to the sheriff, or his deputy, he shall forthwith post in some public place in the city or town assessed, an attested copy of said list and warrant; and shall make no distress for a tax, till after thirty days from the time of such posting.

When tax list, &c., is committed to sheriff, &c.  
G. S. 12, § 43.

44. If a person pays his tax on such list within said thirty days, the officer shall receive for his fees five per cent. on the sum assessed; but if a tax remains unpaid after said thirty days, the officer shall proceed to collect the same by distress or imprisonment, in the manner collectors are required to proceed in like cases. The officer may also levy his fees for service and travel, in the collection of each person's tax, as in other cases of distress and commitment.

Sheriff's fees for collecting.  
Ibid. § 44.

45. When the city council of a city or the inhabitants of a town vote to appoint their treasurer a collector, he may issue his warrants to the sheriff of the county, or his deputy, or any of the constables of the city or town, returnable in thirty days, requiring them to collect any or all taxes due; and such warrants shall be in substance the same and confer like powers as warrants issued by assessors to collectors.

When treasurers are made collectors, how to proceed.  
Ibid. § 45.

46. Every collector shall once in two months, if required, exhibit to the mayor and aldermen or selectmen, and where there are no such officers, to the assessors, a true account of all moneys received on the taxes committed to him, and produce the treasurer's receipts for all money paid into the treasury by him.

Collectors to exhibit accounts every two months if required.  
Ibid. § 46.

47. If a collector neglects so to exhibit his accounts, he shall forfeit the sum of two and a half per cent. on the sums committed to him for collection.

Penalty.  
Ibid. § 47.

48. The collector shall be credited with all sums abated according to law, and with the amount of taxes assessed upon any person committed to prison within one year from the receipt of the tax list by the collector, and before paying his tax, and also with any sums which the city or town may see fit to abate to him, due from persons committed after the expiration of a year.

Collectors to be credited with abatements, &c.  
Ibid. § 48.  
9 Met. 503.

49. If the collector fails to collect a tax, without his own deficiency in

Deficiency in

state or county tax, how supplied.  
G. S. 12, § 49.

default, and there is a deficiency of the amount due on a state or county tax, such deficiency shall be supplied by him from the proceeds of the collection of city or town taxes, if any in his hands ; and, if he have none, by the city or town treasurer, on the written requisition of the collector.

Same, when collectors neglect to pay.  
Ibid. § 50.

50. If a collector of taxes neglects to pay, within the time required by law, such sums of money as ought by him to be paid to the state or county treasurer, the city or town by which such collector was appointed, shall be liable for such sums, to be recovered in an action of contract by such state or county treasurer respectively.

Remedy for collector's neglect.  
Ibid. § 51.

51. If a collector neglects seasonably to pay a state or county tax committed to him, whereby the city or town is compelled to pay the same, or neglects seasonably to account for and pay in a city or town tax committed to him, the city or town may recover the amount thereof, with all damages sustained through such neglect, and interest, by an action of contract, declaring on his official bond if any has been given.

If collector becomes insane, &c., selectmen may remove him.  
Ibid. § 52.  
7 Gray, 130.

52. If a collector becomes insane, or in the judgment of the selectmen otherwise unable to discharge his duty, or absconds, removes, or in the judgment of the selectmen is about to remove, from the place, or refuses on demand to exhibit to the mayor and aldermen, or selectmen, or assessors, his accounts of collections, as herein provided, the selectmen may remove him from office and appoint another collector as in case of the death of the collector.

Tax list of deceased collector, how completed.  
G. S. 12, § 53.  
1 Met. 524.  
4 Gray, 253.

53. If a collector dies before completing the collection of a tax committed to him, the selectmen may appoint some suitable person to complete the collection, who shall receive a reasonable compensation, to be paid by the town, and they may commit the same tax list to him, with their warrant, accordingly ; and when

Temporary collector.  
G. S. 12, § 53.

a temporary collector is appointed by the selectmen, the assessors shall commit the tax list to him with their warrant, and he shall have the same powers and be subject to the same duties and liabilities as other collectors.

If collector dies, &c., list to be delivered to

54. In case of the death or removal from office of a collector, his executors or administrators, and all other persons, into

whose hands any of his unsettled tax lists may come, shall forthwith deliver the same to the selectmen.

selectmen.  
G. S. 12, § 54.  
1 Met. 525.

55. Collectors shall be paid such compensation for their services as their cities or towns shall determine.

Compensation  
of collectors.  
G. S. 12, § 55.

56. No tax paid to a collector shall be recovered back, unless it appears that it was paid after an arrest of the person paying it, a levy upon his goods, a notice of sale of his real estate, or a protest by him in writing; and the damages awarded in a suit or process based upon any error or illegality in the assessment or apportionment of a tax, shall not be greater than the excess of the tax above the amount for which the plaintiff was liable to be taxed. And no sale, contract, or levy shall be avoided by reason of any such error or irregularity.

Taxes paid to  
collector, when  
recovered back.  
Ibid. § 56.  
See *ante*. p. 736,  
§ 54.

57. If at the time and place appointed for the sale of real estate taken for taxes, as provided in the thirty-third section, no person shall appear and bid for the estate thus offered for sale, or the rents and profits thereof, or for the whole or any part of the land, an amount equal to the tax and charges, and the sale shall have been adjourned from day to day, as provided in the thirty-fourth section, a public declaration of the fact shall then and there be made by the collector; immediately after which, provided no bid shall be made equal to the tax and charges, the collector shall give public notice that he shall, and that he then and there does, purchase on behalf of the town or city by which the tax is assessed, the said estate, in one of the forms set forth in the thirty-third section; *provided, however*, that no sum exceeding the amount of the tax and the incidental costs and expenses of levy and sale shall be offered by him therefor.

At sale of real  
estate for taxes  
collector may  
purchase for  
town, if no oth-  
er sufficient bid  
is made.  
1862, 183, § 1.  
See § 33.

58. The deed to be given by the collector, in such case shall, in addition to the statements by law required, set forth the fact of the non-appearance of a purchaser at the sale advertised by him, and shall confer upon such town or city the same rights as belong to an individual to whom such a deed may be given. And the several towns and cities of this commonwealth, in their corporate capacity, are hereby authorized as holders of said deeds, to exercise the same rights and perform the same duties as any individual purchaser of real estate taken for taxes.

Deed in such  
case and rights  
of town there-  
under.  
G. S. 1862, 183,  
§ 2.  
See § 35.

When purchaser at sale fails to pay in ten days, conveyance to be made to town.  
1862, 183, § 3.  
See § 35.

59. If within ten days after the sale of real estate for the payment of taxes, any purchaser thereof shall fail to pay to the collector the sum offered by him, and receive his deed, the sale shall be null and void, and the town or city shall be deemed to be the purchaser of the estate according to the provisions of this act.<sup>1</sup> And the deed to be given by the collector in such case, shall in addition to the statements now required by law, set forth the fact of the preceding sale, and the failure of the purchaser to pay the sum offered as aforesaid.

Deeds to town to be held by treasurer.  
1862, 183, § 4.  
See § 36.

Towns may make regulations for sale, &c., of estates conveyed to them.  
1862, 183, § 4.  
G. S. 13,  
§§ 36-42.

60. The deed given to a town or city under the provisions of this act,<sup>1</sup> shall be placed in the custody of the treasurer thereof, to whom all applications for the redemption of the estate sold, under the provisions of law, shall be made. And the several towns and cities of the commonwealth may make such regulations for the custody, management, and sale of such estates, and the assignment of the tax titles thus obtained, not inconsistent with the laws of the commonwealth, as they may deem expedient. But nothing herein contained shall take from the owner of said real estate, or his heirs or assigns, the right to redeem the same, as provided in section thirty-six.

Collector to be allowed amount of tax and cost in settlement with town.  
1862, 183, § 5.

61. The amount of the tax and all incidental costs and expenses of levy and sale provided for by law, which shall be included in any sale in accordance with the provisions of the four preceding sections, shall be allowed the collector in his settlement with such town or city.

Collector's deed to include special warranty, and town to refund amount paid, &c., in case of error, &c.  
Ibid. § 6.  
See § 35.

62. In the deed which the collector shall execute and deliver, as provided in section thirty-five, there shall also be inserted a special warranty that the sale has in all particulars been conducted according to the provisions of law; and, if it should subsequently appear, that, by reason of any error, omission, or informality in any of the proceedings of assessment or sale, the purchaser has no claim upon the property sold, there shall be paid to said purchaser, upon his surrender and discharge of the deed so given, by the town or city whose collector executed said deed, the amount paid by him, together with ten per cent. inter-

<sup>1</sup> Act of 1862, c. 183, being §§ 57-66 of the text.

est per annum on the same, which shall be in full satisfaction of all claims for damages for any defect in the proceedings. 1862, 183, § 6.

63. If the owner does not redeem the property so purchased by the city or town within the time prescribed by the thirty-sixth section, said town or city may at any time proceed to sell the said real estate at public auction, after having given the same notice as is required in section twenty-eight, executing and delivering to the highest bidder therefor, a quitclaim deed; and from the money arising from said sale shall be deducted the expenses of making the sale, together with the amount paid at the first sale for tax and charges, with ten per cent. interest per annum thereon, and all intervening taxes and necessary charges; and the balance, if any, shall be deposited in the city or town treasury to be paid to the party legally entitled to the estate if the same had not been sold for taxes, if the same shall be called for within five years; and if not demanded within that time the same shall enure to the benefit of said city or town.

If estate conveyed is not redeemed in two years, town may sell again on giving notice, &c.  
1862, 183, § 7.  
See *ante*, § 28.

Application of proceeds.  
1862, 183, § 7.  
See *ante*, § 28.

64. If any estate shall be purchased by any city or town, according to the provisions of this act,<sup>1</sup> taxes shall be assessed upon the same in the same manner as though the same were not so purchased; and said taxes shall be deducted from the proceeds of the final sale, as provided in the previous section.

Taxes to be assessed on estate conveyed to towns, and deducted out of proceeds of final sale.  
1862, 183, § 8.

65. When a person committed to prison for non-payment of taxes desires to take the oath for the relief of poor debtors, as provided in section fifteen, chapter twelve, of the General Statutes, he may represent the same to the jailer, and the jailer shall make the same known to some magistrate named in section one, chapter one hundred and twenty-four, of the General Statutes, and the magistrate shall thereupon appoint a time and place for the examination of the debtor, and shall direct the jailer to cause the debtor to be present at the same, and shall further proceed as directed in section fifteen.

Persons committed for non-payment of taxes, how may take poor debtor's oath.  
1862, 183, § 9.  
See § 15, *ante*.  
G. S. 124, § 1.

66. The following charges and fees, and no other, shall be allowed to the collector, and shall be added to the amount of the tax, as provided in section thirty-three.

Collector's fees  
1862, 183, § 10.  
See § 33.

<sup>1</sup> See foot note on page 760.

Collector's fees.  
1862, 183, § 10.

For making a written demand, twenty cents ;

For preparing advertisement, fifty cents ;

For advertisement in newspaper, the actual cost of the same ;

For posting up notices in one or more public places, twenty cents for each notice ;

For posting up notices on each piece of real estate, twenty cents ;

For copy of notice, and the publication thereof, and obtaining affidavit of disinterested person, fifty cents ;

For recording affidavit at registry of deeds, the fees of the register ;

For preparing deed, two dollars ;

For poundage, four per cent. on the first one hundred dollars ; two per cent. on the second hundred dollars, and one per cent. on the balance of the tax.

And in the event that any delinquent tax-payer offers to pay the tax before the day of sale, such charges shall be added to the tax as have intervened at the time of said offer to pay.

In distribution  
of insolvent es-  
tates, county,  
city, and town  
taxes entitled  
to same priority  
as state taxes.  
1862, 183, § 11.  
G. S. 118, § 96.

67. Section ninety-six of chapter one hundred and eighteen of the General Statutes is hereby amended, by adding at the end of the first clause therein, after the word "state," the words "or any county, city, or town therein," so that county, city, and town taxes shall be entitled to the same priority or preference as state taxes are now entitled to, in cases of insolvent debtors.

City treasurer  
shall be collec-  
tor of taxes.  
1802, 7, § 3.  
1821, 110, §§ 1, 13.  
See *ante*, p. 17.  
1854, 448, § 42.  
Deputies who  
shall give  
bonds.  
See *ante*, p. 16,  
§ 37.

68. By virtue of the Act of eighteen hundred and two, chapter seven, section three, as modified by the first and thirteenth sections of the Act of eighteen hundred and twenty-one, chapter one hundred and ten, the treasurer of the city of Boston is the collector of taxes in the said city, and is empowered to substitute and appoint under him such and so many deputies or assistants as the service may be found to require, who shall give bonds for the faithful discharge of their duty, in such sums, and with such sureties, as the mayor and aldermen shall think proper ; and the said collector, and his deputy or deputies, shall have the same powers as are invested by law in collectors of taxes chosen by other towns in this commonwealth.

See *ante*, p. 15,  
§ 33.

Treasurer, &c.,

69. By virtue of the Act of eighteen hundred and three,

chapter fifteen, as modified by the city charter, the treasurer, his deputy or deputies, is empowered to collect all such taxes as may be outstanding and uncollected, at the time of his being chosen to the office of treasurer; such treasurer and his deputies first giving bonds for the faithful discharge of their duty, in such sums and with such sureties as the mayor and aldermen shall think proper.

may collect taxes outstanding when he was chosen.  
1803, 15, § 1.  
1821, 110, §§ 1, 13.

70. The said treasurer may issue his warrant to his deputy or deputies, for the collecting and gathering in such part of the rates or assessments as, in his discretion, he shall think proper to commit to such deputy or deputies; which warrant shall be of the same tenor with the warrant prescribed to be issued by the selectmen or assessors, for the collecting and gathering in of the state rates or assessments, *mutatis mutandis*.

Treasurer may issue his warrant for part of the rates, to his deputies.  
1803, 15, § 2.  
1821, 110, § 1.

71. By virtue of the Act of eighteen hundred and seven, chapter one hundred and thirty-four, as modified by the city charter, the treasurer and collector is authorized to issue his warrant to the sheriff of the county of Suffolk, his deputy, or to any constable of the city of Boston, directing them to distrain the persons or property of any person or persons who may be delinquent in the payment of taxes, after the time has expired, that is or may be fixed for payment by any vote of said town; which warrants shall be of the same tenor with the warrant prescribed to be issued by selectmen or assessors for the collecting or gathering in of the state rates or assessments, *mutatis mutandis*. And the said officers shall make a return of their warrants, with their doings thereon, to the said treasurer and collector, within thirty days from the date thereof; *provided, however*, that nothing in the said act shall prevent the said treasurer and collector, whenever there may be a probability of losing a tax, from distraining the person or property of any individual, before the expiration of the time fixed by the votes of said town.

Power of distraining for taxes, how to be exercised.  
1807, 134, § 1.  
1821, 110, § 1.  
1854, c. 448, § 36.

72. By the same act it was made the duty of the said officers to execute all warrants they may receive from said treasurer and collector, pursue the same process in distraining the persons or property of delinquents, as collectors of taxes were then authorized by law to do and perform; and for collecting the

Same subject.  
1807, 134, § 2.

1807, 134, § 2. sum of money due on said warrant, receive the fees that were then allowed by law for levying executions in personal actions ; *provided, however*, before the said officers shall serve any warrant, they shall deliver to the delinquent, or leave at his or her usual place of abode, a summons from said treasurer and collector, stating the amount due ; and that unless the same is paid within ten days from the time of leaving said summons, into the city treasury, with twenty cents for said summons, his or her property will be distrained according to law.

ORDINANCE.<sup>1</sup>

Assessors to be  
chosen.  
March 18, 1857.  
See § 18.

SECTION 1. There shall be chosen annually, in the month of February or March, by concurrent vote of the two branches of the city council, thirteen<sup>2</sup> assessors of the public taxes ; four of whom shall be voted for upon one ballot, and shall be denominated principal assessors, and shall devote their whole time to the service of the city, and shall receive such compensation as the city council may determine ; and the remaining nine shall be voted for on one ballot, and shall receive for their services four dollars per day each, while going through the wards, taking a list of the ratable polls, and estimating the value of real and personal estates ; and three dollars per day in full for their services while engaged in other duties of their office. All the said assessors shall hold their office during the year, and until others are chosen and qualified in their stead.

Committee to  
nominate as-  
sessors.  
March 18, 1857.  
See § 19.

SECT. 2. In the month of January, annually, a committee of the common council, consisting of one member from each ward, shall be appointed, whose duty it shall be to nominate assistant assessors, from the several wards, selecting, as nearly as may be, a just representation from the various callings of the persons to be taxed.<sup>3</sup>

Assistant as-  
sessors to be  
chosen.

SECT. 3. In the month of February or March, annually, there shall be chosen, by concurrent vote of the two branches

<sup>1</sup> Ordinances concerning the assessment and collection of taxes, passed October 24, 1850 ; March 18, 1857 ; June 20, 1860 ; July 16, 1861 ; December 8, 1862.

<sup>2</sup> See *post.* pp. 767, 768, § 18, and note.

<sup>3</sup> See *post.* p. 768, § 19, and note.

of the city council, two assistant assessors, from each ward of the city, who shall hold their office during the year, and until others are chosen and qualified in their stead; and they shall receive such compensation, in full for their services, as the city council may determine.<sup>1</sup>

SECT. 4. Each of the officers mentioned in the preceding sections shall be removable at any time by the city council; and in case of any vacancy by death, resignation, removal, or otherwise, it shall be filled in the manner before provided.

Assessors, &c.,  
may be re-  
moved.  
Oct. 24, 1850.  
Vacancies to be  
filled.

SECT. 5. The assessors shall meet as soon as practicable after their election, and organize themselves into a board, by the choice of a chairman and secretary, which secretary shall also be the secretary of the board provided for in the next section.

Organization of  
assessors.  
Ibid.

SECT. 6. The assessors and assistant assessors shall meet as soon as practicable after their election, and organize themselves into a board, by the choice of a chairman; and a majority of the board shall constitute a quorum for the transaction of business. But nothing in this, or the preceding section, shall be construed to restrain the city council from electing one of the assessors to be chairman of both boards, whenever it may see fit so to do.

Organization of  
assessors and  
assistant as-  
sessors.  
Ibid.

SECT. 7. It shall be the duty of the said secretary of the two boards, thus organized, to keep the records of the doings of both boards in the same book, in the order in which the meetings occur, always designating the board whose doings are recorded.

Secretary to  
keep records of  
both boards.  
Ibid.

SECT. 8. It shall be the duty of the secretary of the board of assessors to certify the number of days that the per diem assessors and the assistant assessors have severally devoted to the service of the city. And the said per diem assessors and assistant assessors shall severally receive pay only for such number of days' service as shall have been so certified by the said secretary.

Days of service  
to be certified  
by the secre-  
tary.  
June 20, 1860.

SECT. 9. A joint committee on the assessors' department,

Committee on

<sup>1</sup> See *post.* p. 768, §§ 20, 21, and note.

the assessors' department.  
Oct. 24, 1850.

consisting of two of the board of aldermen, and three of the common council, shall be annually appointed, whose duty it shall be to confer with the assessors, and make such provision for their assistance, as the exigency of that department may from time to time require.

Duties of assistant assessors.  
Ibid.

SECT. 10. It shall be the duty of one or more of the said assistant assessors to visit, in company with one or more of the assessors, the different estates in their respective wards, and to assist the assessors in taking a list of the polls, in estimating the value of their personal property, and in appraising the value of the real estate.

Chairman of assessors or other assessor to remain at assessors' room.  
Ibid.

SECT. 11. During the season when the assessors are called upon to perform street duty, it shall be the duty of the chairman, or such other assessor as he may designate, to remain at the assessors' room, during office hours, to attend to such business as may be required to be transacted there.

Abatements to be recorded, &c.  
Ibid.  
8 Cush. 55.  
7 Cush. 273.

SECT. 12. Abatements of taxes, which shall be at any time allowed, shall be recorded by the assessors, and the record thereof shall contain the names of all persons whose taxes shall be abated in whole or in part, with the amount originally assessed, and the amount of abatements; and the reasons for abatement shall be stated on the said record, against the name of each person whose tax shall be abated; and this record shall be laid before the city council, annually, on or before the fourth day of March. And that this record may be perfect, the city clerk is instructed to inform the assessors of all abatements made by the board of aldermen, at the time they are made, in all which last-mentioned cases the reasons of abatement may be omitted.

Assessors to deliver tax bills to the treasurer on or before October 1.  
Oct. 24, 1850.

SECT. 13. It shall be the duty of the assessors to make out and deliver, to the treasurer and collector, tax bills for all taxes assessed on all persons and estates, on or before the first day of October, in each year.

How taxes shall be collected.  
Ibid.

SECT. 14. The city treasurer and collector shall immediately issue the tax bills, and if the same are not paid within thirty days thereafter, he shall issue a summons to each delinquent person assessed; and if such person shall not pay his taxes

within ten days after the receipt of such summons, or after the service thereof upon him in the usual form, the said treasurer shall issue his warrant for the collection of said taxes according to law. Oct 24, 1850.

SECT. 15. As soon as it conveniently may be, after the treasurer and collector shall hereafter sell or cause to be sold for non-payment of any tax or assessment, any real estate in the city, he shall cause to be made, under his supervision, and kept in his office for public reference, an alphabetical list, where practicable, of the location of such real estate, as well as of the name of the person or persons, if known, against whom such tax or assessment was assessed. List of estates sold to be kept. July 16, 1861.

SECT. 16. The said assessors may, at their discretion, transfer the amount of taxes assessed on real estate not owned at the time of assessment by the persons charged with such taxes, to the persons by whom the said real estates were owned at the time. Assessors may transfer taxes on real estate to the owner. Oct. 24, 1850.

SECT. 17. The said assessors shall assess, upon the owners of real estate, lying within the city, the amount of taxes for which such real estate may be taxable; *provided*, that, in any case where the assessors may deem it to be more for the public interest to assess the tenant or occupant, instead of the owner, they may so assess such tenant or occupant; and *provided, also*, that nothing herein shall affect the rights which owners and tenants may have, respectively, by reason of any agreement made between themselves concerning such taxes. Real estate to be assessed to the owner. Ibid. Proviso. Further proviso.

SECT. 18. There shall be chosen annually, in the month of February or March, by concurrent vote of the two branches of the city council, seventeen assessors of the public taxes, four of whom shall be voted for upon one ballot, and shall be denominated principal assessors, and shall devote their whole time to the service of the city, and shall receive such compensation as the city council may determine; and the remaining thirteen shall be voted for on one ballot, and shall receive for their services four dollars per day each, while going through the wards, taking a list of the ratable polls, and estimating the value of real and personal estates; and three dollars per day in full for Seventeen assessors to be chosen until 1865. Dec. 8, 1862.

Dec. 8, 1862.

their services while engaged in other duties of their office. All the said assessors shall hold their office during the year, and until others are chosen and qualified in their stead.

Committee to  
nominate as-  
sistant assess-  
ors, to be  
chosen.  
Ibid.

SECT. 19. In the month of January, annually, a committee of the common council, consisting of one member from each ward, shall be appointed, whose duty it shall be to nominate assistant assessors from the several wards, selecting, as near as may be, a just representation from the various callings of the persons to be taxed.

Four assistant  
assessors to be  
chosen for cer-  
tain wards.  
Ibid.  
See *ante*, p. 764,  
§ 3.

SECT. 20. In the month of February or March, annually, there shall be chosen by concurrent vote of the two branches of the city council, four assistant assessors from each of wards two, four, eleven, and twelve, and two assistant assessors from each of the other wards, who shall hold their office during the year, and until others are chosen and qualified in their stead; and they shall receive such compensation in full for all their services as the city council may determine.

Repeal of ordi-  
nances.  
Ibid.  
Revival of ordi-  
nances of 1857.  
Ibid.

SECT. 21. The ordinance in addition to an ordinance concerning the assessment and collection of taxes, passed March eighteen, eighteen hundred and fifty-seven, and all other ordinances and parts of ordinances inconsistent with this ordinance, are hereby repealed; and whenever a new division of the city into wards shall be completed, this ordinance shall cease of effect, and the aforesaid ordinance in addition to an ordinance concerning the assessment and collection of taxes, shall be revived and exist in full force.<sup>1</sup>

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<sup>1</sup> Sections 18, 19, 20, and 21 comprise an ordinance which was passed December 8, 1862, to meet the peculiar exigency which then existed in this city, on account of the unequal size of the wards, both as respects property and voters. In order to equalize as far as possible the duties of the assessors, as well as to promote the public interests, it was found necessary to adopt the temporary expedient of providing additional assessors for the four largest wards, making seventeen assessors instead of thirteen, as provided in section one. When a new division of the wards occurs, (in 1865,) these four sections will be of no effect, and sections 1, 2, 3, on pp. *ante*, 764, 765, will be in force.

TRUANTS.<sup>1</sup>

STATUTES.		ORDINANCE.	
1.	Cities shall make needful provisions, by-laws, &c., for habitual truants, &c. Penalties.	5.	Truant officers. Appointment, duties, &c.
2.	Punishment of habitual truants, &c.	1.	Habitual truants, &c., to be fined.
3.	Police court to have jurisdiction of the offence.	2.	Institution of instruction, house of reformation, &c., for the commitment of truants, &c.
4.	Discharge of minors imprisoned for such offences. Costs.	3.	Repeal of former ordinances.

STATUTES.

1. Each city and town shall make all needful provisions and arrangements concerning habitual truants, and also concerning City to make needful provisions, by-laws,

<sup>1</sup> The General Statutes, chapter forty-two, sections four to eight, inclusive, contain provisions respecting truants and certain children not attending school but they have been modified by the subsequent legislation given in the text. This subsequent legislation has been such a substantial re-enactment of the provisions of the General Statutes upon this subject, as to raise the suggestion that it operates as a repeal thereof. But as there is no express repeal, and as the acts differ somewhat, the sections of the General Statutes are here added for convenience of comparison.

4. Each city and town may\* make all needful provisions and arrangements concerning habitual truants, and children not attending school, or without any regular and lawful occupation, or growing up in ignorance, between the ages of five and sixteen years; and also all such by-laws respecting such children, as shall be deemed most conducive to their welfare and the good order of such city or town; and there shall be annexed to such by-laws suitable penalties, not exceeding twenty dollars for any one breach; *provided*, that said by-laws shall be approved by the superior court of the county. By-laws respecting habitual truants, &c. Fines. G. S. 42, § 4.

5. The several cities and towns availing themselves of the provisions of the preceding section,† shall appoint at the annual meetings of such towns, or annually by the mayor and aldermen of such cities, three or more persons, who alone shall be authorized, in case of violation of such by-laws, to make the complaint and carry into execution the judgments thereon. Violations of by-laws, how prosecuted. Ibid. § 5.

6. A minor convicted under such by-law of being an habitual truant, or of not attending school, or of being without regular and lawful occupation, or Minor convicted may be com-

\* This word "may" is changed to "shall," by the Act of 1862, c. 21, § 1.

† The words "availing themselves of the provisions of the preceding section," are stricken out by the Act of 1862, c. 21, § 2.

&c., for habitual truants, &c.  
1862, 207, § 1.

Penalties.  
Ibid.

By-laws to be approved.  
Ibid.

Punishment of habitual truants, &c.  
Ibid. § 2.

children wandering about in the streets or public places of any city or town, having no lawful occupation or business, not attending school, and growing up in ignorance, between the ages of seven and sixteen years; and shall also make all such by-laws respecting such children as shall be deemed most conducive to their welfare and the good order of such city or town; and there shall be annexed to such by-laws suitable penalties not exceeding twenty dollars, for any one breach; *provided*, that said by-laws shall be approved by the superior court sitting in any county in the commonwealth.

2. Any minor convicted of being an habitual truant, or any child convicted of wandering about in the streets or public places of any city or town, having no lawful occupation or business, not attending school, and growing up in ignorance, between the ages of seven and sixteen years, may, at the discretion of the justice or court having jurisdiction of the case, instead of the fine mentioned in the first section, be committed to any such institution of instruction, house of reformation, or suitable situation provided for the purpose, under the authority of the first section, for such time, not exceeding two years, as such justice or court may determine.

mitted, &c.  
G. S. 42, § 6.

growing up in ignorance, may, at the discretion of the justice or court having jurisdiction of the case, instead of the fine mentioned in section four, be committed to any such institution of instruction, house of reformation, or suitable situation provided for the purpose under authority of section four, for such time, not exceeding two years, as such justice or court may determine.

On non-payment of fine, may be committed.  
How discharged.  
Ibid. § 7.  
See G. S. c. 180.

7. A minor convicted of either of said offences, and sentenced to pay a fine, may, in default of payment thereof, be committed to such institution of instruction, house of reformation, or suitable situation provided as aforesaid. And upon proof that the minor is unable to pay the fine, and has no parent, guardian, or person chargeable with his support able to pay the same, he may be discharged by such justice or court, whenever it is deemed expedient, or he may be discharged in the manner poor convicts may be discharged from imprisonment for non-payment of fine and costs.

Warrants, where returnable.  
Compensation.  
G. S. 42, § 8.

8. Warrants issued under the provisions of the four preceding sections shall be returnable before any trial justice or judge of a police court, at the place named in the warrant; and the justice or judge shall receive such compensation as the city or town determines.

3. Either of the justices of the police court of the city of Boston, and any judge or justice of any police court, and any trial justice, in this state, shall have jurisdiction within their respective counties of the offences described in the two preceding sections.

Police court to have jurisdiction.  
1863, 44, § 1.

4. Whenever it shall be made to appear to any such justice, judge, or trial justice, acting within his jurisdiction, upon a hearing of the case, that there is good and sufficient reason for the discharge of any minor imprisoned for either of such offences, he may issue such discharge under his hand upon such terms as to costs as to him seem just, directed to the person having the custody of such minor, and upon the service of the same on such person and payment of costs required, said minor shall be discharged.

Discharge of minors imprisoned for such offences; costs.  
Ibid. § 2.

5. The General Statutes, chapter forty-two, section five, provide that the mayor and aldermen of cities may appoint annually three or more persons, who alone are authorized, in case of violation of by-laws concerning certain children not attending school, "to make the complaint and carry into execution the judgments thereon."

Truant officers, appointments, duties, &c.  
G. S. 42, § 5.  
See Schools, ante, pp. 646, 647 §§ 59-63.  
See also note on page 761.

#### ORDINANCE.<sup>1</sup>

SECTION 1. Any of the persons described in the first section of the "Act concerning truant children and absentees from school," passed on the thirtieth day of April, in the year one thousand eight hundred and sixty-two, upon conviction of any offence described in said act, shall be punished by fine not exceeding twenty dollars.

Punishment for habitual truants, &c.  
Nov. 9, 1863.

SECT. 2. The house for the employment and reformation of juvenile offenders is hereby assigned and provided as the institution of instruction, house of reformation, or suitable situation, mentioned in the second section of said Act.

Place of commitment for truants, &c.  
Ibid.  
Repeal of former ordinances.

SECT. 3. All former ordinances concerning truant children and absentees from school are hereby repealed.

<sup>1</sup> An ordinance concerning truant children and absentees from school, passed November 9, 1863, and approved by the superior court, November 11, 1863.

## WARDS.

## STATUTES.

1. City may be divided into wards by the city council, once in ten years.
2. Ward officers at first election after a new division of wards, theretofore chosen to act.
3. Officers chosen after new divisions to hold office until the next annual meeting.

## ORDINANCE.

1. Boundaries of Ward One.
2. Boundaries of Ward Two.
3. Boundaries of Ward Three.
4. Boundaries of Ward Four.
5. Boundaries of Ward Five.
6. Boundaries of Ward Six.
7. Boundaries of Ward Seven.
8. Boundaries of Ward Eight.
9. Boundaries of Ward Nine.

10. Boundaries of Ward Ten.
11. Boundaries of Ward Eleven.
12. Boundaries of Ward Twelve.
13. Use of the ward rooms may be granted by board of aldermen, &c., for political meetings.
14. Persons not legal voters, &c., in ward, shall not vote, &c.
15. Chief of police to be notified of meetings, and detail police to keep the peace.
16. List of voters to be placed in and on the ward room by superintendent of public buildings.
17. List of voters not to be removed, &c.
18. Applicants to pay expenses of opening, lighting, &c., the room.
19. Copy of ordinance to be placed in ward room.
20. Repeal of former ordinances.

## STATUTES.

City may be divided into twelve wards. 1854, 448, § 3. See Charter, *ante*, p. 3.

1. It shall be the duty of the city council, and they are empowered, during the year eighteen hundred and sixty, and whenever thereafter they may deem it expedient, not oftener than once in ten years, to cause a new division of the city to be made into twelve wards, in such manner as to include an equal number of voters in each ward, as nearly as conveniently may be, consistently with well-defined limits to each ward; and until such division be made, the boundary lines of the wards shall remain as now established.<sup>1</sup>

<sup>1</sup> The division of the city into wards, as now existing, was made in 1850.

The *City Charter*, § 3, empowered the city council to divide the city into wards in 1860, "and whenever thereafter they may deem it expedient, not oftener than once in ten years;" but the Gen. Stats. c. 8, § 5, provide that "no new division of wards shall be made in the city of Boston previous to the next apportionment of senators and representatives," which will be in the year 1865. See *Amendments to the Constitution*, arts. 21, 22.

2. At the first election held after a new division of wards, Ward officers after new division, &c. G. S. 19, § 4. in any city in this commonwealth, the respective ward officers, chosen under the preceding organization, shall officiate in the same numerical ward for which they were chosen respectively, and shall continue to act there until others shall be chosen and qualified in their stead.

3. All officers chosen at any meeting called by the mayor To hold their office until the next annual meeting. Ibid. § 5. and aldermen of any city, after such new division into wards, shall hold their offices until the next annual meeting, and until others shall be chosen and qualified in their stead.<sup>1</sup>

ORDINANCE.<sup>2</sup>

SECTION 1. The present division of the wards of the city is New division of the wards. June 24, 1850. hereby altered, and a new division thereof is hereby made, and the same shall hereafter be known and constituted as follows, viz: —

Beginning at the water, on the southerly side of the Eastern Boundaries of the wards. Ward One. Packet Pier; thence across Commercial Street to Richmond Street; thence by the centre of Richmond Street, across Hanover Street, to Salem Street; thence by the centre of Salem Street to Cooper Street; thence by the centre of Cooper Street, crossing Charlestown Street, to Beverly Street; thence by the centre of Beverly Street to Causeway Street; thence across Causeway Street, and in the same direction with Beverly Street, to the water; thence by the water to the point begun at.

SECT. 2. All East Boston and the islands. Ward Two.

SECT. 3. Beginning at the water on the north side of the Ward Three Fitchburg Railroad depot, on a line which would strike the central line of Beverly Street if extended to the water; thence by such line and the centre of Beverly Street to Charlestown Street; thence across Charlestown Street, and by the centre of Cooper

<sup>1</sup> For further provisions respecting ward officers, see *Charter*, ante, pp. 4-6, §§ 7-14, and *Elections*, ante, pp. 153-159.

<sup>2</sup> An ordinance providing for a new division of the city into wards, passed June 24, 1850; and an ordinance regulating the use of the ward rooms for political meetings, passed December 30, 1862.

Ward Three.  
June 24, 1850.

Street to Salem Street; thence the by centre of Salem Street to Richmond Street; thence by the centre of Richmond Street to Hanover Street; thence by the centre of Hanover Street to Court Street; thence by the centre of Court Street to Green Street; thence by the centre of Green Street to Leverett Street; thence by the centre of Leverett Street to Causeway Street; thence by the centre of Causeway Street to Lowell Street; thence by the centre of Lowell Street, and by a line in the same direction with Lowell Street, to the water; thence by the water to the point begun at.

Ward Four.

SECT. 4. Beginning at the water, on the southerly side of the Eastern Packet Pier; thence across Commercial Street to Richmond Street; thence by the centre of Richmond Street to Hanover Street; thence by the centre of Hanover Street to Court Street; thence by the centre of Court Street to Green Street; thence by the centre of Green Street to Staniford Street; thence by the centre of Staniford Street to Cambridge Street; thence by the centre of Cambridge Street to Temple Street; thence by the centre of Temple Street and Mount Vernon Street to Park Street; thence by the centre of Park Street to Tremont Street; thence by the centre of Tremont Street to Winter Street; thence by the centre of Winter Street to Washington Street; thence by the centre of Washington Street to Milk Street; thence by the centre of Milk Street to India Street; thence across India Street by a straight line to the water on the south side of Central Wharf; thence by the water to the point begun at.

Ward Five.

SECT. 5. Beginning at the water at the easterly end of Cambridge Bridge; thence by the centre of Cambridge Street to Staniford Street; thence by the centre of Staniford Street to Green Street; thence by the centre of Green Street to the junction of Lynde Street and Leverett Street; thence by the centre of Leverett Street to Causeway Street; thence by the centre of Causeway Street to Lowell Street; thence by the centre of Lowell Street, and by a line in the same direction with Lowell Street, to the water; thence by the water to the point begun at.

Ward Six.

SECT. 6. Beginning at the water, at the easterly end of

Cambridge Bridge; thence by the centre of Cambridge Street to Temple Street; thence by the centre of Temple Street and Mount Vernon Street to Beacon Street; thence by the centre of Beacon Street and the Western Avenue to the boundary line between Boston and Roxbury, on the Western Avenue; thence northerly by said boundary line to the water; thence by the water to the point begun at.

Ward Six.  
June 24, 1850.

SECT. 7. Beginning at the water, on the south side of Central Wharf; thence across India Street by a straight line to Milk Street; thence by the centre of Milk Street to Washington Street; thence by the centre of Washington Street to Winter Street; thence by the centre of Winter Street to Tremont Street; thence by the centre of Tremont Street to West Street; thence by the centre of West Street and Bedford Street to Kingston Street; thence by the centre of Kingston Street to Essex Street; thence by the centre of Essex Street to South Street; thence by the centre of South Street to Summer Street; thence by the centre of Summer Street and by a straight line in continuation thereof to the water on the northerly side of Summer Street Wharf; thence by the water to the point begun at.

SECT. 8. Beginning at the water on the northerly side of Summer Street Wharf; thence by a straight line in continuation of the centre of Summer Street, and by the centre of Summer Street to South Street; thence by the centre of South Street to Essex Street; thence by the centre of Essex Street to Kingston Street; thence by the centre of Kingston Street to Bedford Street; thence by the centre of Bedford Street and West Street to Tremont Street; thence by the centre of Tremont Street to Eliot Street; thence by the centre of Eliot Street to Washington Street; thence across Washington Street to Kneeland Street; thence by the centre of Kneeland Street to Federal Street; thence crossing Federal Street by a straight line to the water on the southerly side of Howe's Wharf; thence by the water to the point begun at.

Ward Eight.

SECT. 9. Beginning at the boundary line between Boston and Roxbury, on the Western Avenue; thence by the centre of the Western Avenue and Beacon Street to Park Street;

Ward Nine.

Ward Nine.  
June 24, 1850.

thence by the centre of Park Street to Tremont Street; thence by the centre of Tremont Street to Warren Street; thence by the centre of Warren Street to Washington Street; thence by the centre of Washington Street to West Castle Street; thence by the centre of West Castle Street to Tremont Street; thence by the centre of Tremont Street to the railroad bridge; thence by the centre of the Boston and Worcester Railroad to the boundary line between Boston and Roxbury, as it existed previous to April six, eighteen hundred and fifty-nine;<sup>1</sup> thence by said boundary line to the point begun at.

Ward Ten.

SECT. 10. Beginning at the water on the southerly side of Howe's Wharf; thence by a straight line across Federal Street to Kneeland Street; thence by the centre of Kneeland Street to Washington Street; thence across Washington Street to Eliot Street; thence by the centre of Eliot Street to Tremont Street; thence by the centre of Tremont Street to Warren Street; thence by the centre of Warren Street to Washington Street; thence by the centre of Washington Street to Dover Street; thence by the centre of Dover Street to the water at the northwesterly end of the Dover Street Bridge; thence by the water to the point begun at.

Ward Eleven.

SECT. 11. Beginning at the boundary line between Boston and Roxbury, on the Boston and Worcester Railroad, as it existed previous to April six, eighteen hundred and fifty-nine;<sup>1</sup> thence by the centre of the Boston and Worcester Railroad to the railroad bridge; thence by the centre of Tremont Street to West Castle Street; thence by the centre of West Castle Street to Washington Street; thence by the centre of Washington Street to Dover Street; thence by the centre of Dover Street to the water at the northwesterly end of the Dover Street Bridge; thence by the water to the boundary line between Boston and Roxbury; thence by said boundary line to the point begun at.

Ward Twelve.

SECT. 12. All South Boston, including Washington Village, recently annexed to the city of Boston.

Use of ward

SECT. 13. Whenever there shall be made to the board

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<sup>1</sup> See Act of 1859, c. 210.

of aldermen or superintendent of public buildings a written application by not less than five legal voters of any ward for the use of the ward room in such ward for the purpose of holding a meeting therein, said board or said superintendent, (either by the special order of said board or under established rules or regulations of said board,) may grant for a time and purpose specified in the permit upon the terms and subject to the provisions of this ordinance, the use of said ward room to said applicants who shall be for such time in possession thereof. But such permit shall not extend to any adjournment or adjournments of said meeting unless so stated in such permit, and such permit shall be revocable at any time by the board of aldermen, and every such application shall state the kind of meeting proposed by the applicants to be held in the ward room, and also the call for such meeting, and all notifications of such meeting shall specify that the invitation or request to persons to be present thereat is subject to the provisions of this ordinance.

SECT. 14. If any person not a legal voter in such ward, and not included in the call for such meeting, shall mark or vote at such meeting, or if any person, whether a legal voter in such ward or not, against the expressed consent of such applicants, or of a major part of them present, shall mark or vote in choice of candidates, or otherwise vote or speak or remain at said meeting or any adjournment thereof, he shall be punished by a fine not exceeding twenty dollars for each offence; and in case the notifications of said meeting shall have contained the specification aforesaid, making the invitation or request to persons to be present thereat subject to the provisions of this ordinance, it shall be the duty of any police officer, if so directed by said applicants or by a major part of them present, or by the presiding officer of said meeting, to remove from the ward room any person offending against the provisions of this section, who, being requested by said applicants or a major part of them present, or by the presiding officer of said meeting, to leave the room, shall neglect or refuse so to do.

SECT. 15. Whenever any permit as aforesaid shall have been granted as aforesaid, it shall be the duty of the superintendent

room may be  
granted by  
board of alder-  
men, &c., for  
political meet-  
ings.  
Dec. 30, 1862.

Persons not  
legal voters,  
&c., in ward,  
shall not vote,  
&c.  
Ibid.

Chief of police  
to be notified of

meetings, &c.  
Dec. 30, 1862.

of public buildings to notify the chief of police thereof, who shall thereupon detail a sufficient police force to be present and keep the peace at such meeting, and any adjournment thereof, and obey the lawful orders of the applicants or of the major part of them present, and also of the chairman or presiding officer of the meeting, and enter complaints for all violations of this ordinance.

List of voters  
to be placed in  
and on the  
ward room.  
Ibid.

SECT. 16. As soon as the list of voters in any ward is prepared for any national, congressional, state, county, or municipal election, a copy of such shall be posted or hung up by the superintendent of public buildings inside of the ward room in such ward, and a like copy be posted or hung up by him in some conspicuous place on the outside of such ward room, so as to be readily accessible to the public, and there remain till after the next election, and until new and revised lists shall be substituted therefor.

Applicants to  
pay expenses of  
opening, light-  
ing, &c.  
Ibid.

SECT. 17. The applicants to whom any such permit shall be granted shall before the issuing thereof pay to the said superintendent such sum of money as he shall think sufficient to defray the expense of opening and closing and lighting and heating the ward room during the time specified in such permit, which sum shall be accounted for and paid by him as the city council shall direct.

List of voters  
posted not to be  
taken away, &c.,  
except, &c.  
Ibid.

SECT. 18. Any person other than the city clerk, or some person by him duly authorized, who shall carry away, destroy, break, or mutilate any copy so posted or hung up, shall be punished by a fine not exceeding twenty dollars for each offence. The provisions of this section, however, shall not apply to the mere erasure of the name of any person from the lists in any ward who shall at the time of such erasure have actually ceased to be a legal voter in such ward.

Copy of ordi-  
nance to be  
placed in each  
ward room.  
Ibid.

SECT. 19. It shall be the duty of the said superintendent to cause to be suitably framed and hung up in some conspicuous place in each of the ward rooms of the city a printed copy of this ordinance. And it shall be specified in all permits, granted as aforesaid, that the same are granted upon the terms and subject to the provisions of this ordinance.

SECT. 20. This ordinance shall take effect from and after its passage, and all ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

Repeal of other  
ordinances.  
Dec. 30, 1862.

## WATER.

## STATUTES.

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. City may obtain water from Long Pond, &amp;c., in Natick, &amp;c. May take and hold land. Shall file, in registry of deeds, a description of lands, ponds, &amp;c., taken.</li> <li>2. May construct aqueducts, dams, reservoirs, &amp;c. May distribute water throughout the city, lay pipes, &amp;c. May dig up highways, &amp;c., when necessary.</li> <li>3. Commissioners to be appointed. Their duties.</li> <li>4. Compensation.</li> <li>5. Their powers to be exercised by the city, after their office shall cease.</li> <li>6. City of Boston shall be liable to pay all damages, sustained by taking land, &amp;c. Applications to court in case of disagreement. Court may appoint three freeholders to assess damages.</li> <li>7. Parties may claim a trial by jury if dissatisfied with award.</li> <li>8. No application to be made for damages for taking water, until actually diverted, &amp;c.</li> <li>9. Where persons sustaining damages neglect to institute proceedings therefor, the city may commence such proceedings. How such persons shall be barred.</li> <li>10. City may tender to petitioner for damages, or bring into court,</li> </ol> | <p>such sum as it shall think proper. Effect of such tender or payment.</p> <ol style="list-style-type: none"> <li>11. City council may issue water scrip, to defray expenses.</li> <li>12. City council may make temporary loans, to be redeemed within five years by water scrip.</li> <li>13. Additional scrip may be issued by city council.</li> <li>14. They may also issue scrip for payment of interest. But not after expiration of two years from completion of aqueducts, &amp;c. Form of scrip. Record to be kept of same.</li> <li>15. City council to regulate the price of water. Net surplus income to be applied to payment of principal and interest of scrip.</li> <li>16. If surplus income is insufficient to pay the interest, the supreme judicial court may, on petition, &amp;c., appoint commissioners, who may raise the price of water.</li> <li>17. If such income is more than sufficient, &amp;c., the court may appoint commissioners, on petition, &amp;c., who may reduce the price of water. Reduction shall not be so great that such income will be insufficient, &amp;c. Cost, on such petitions.</li> <li>18. Occupant of tenement, and owner, both liable for price of water. Action for use of water without consent of the city. Inhabitants</li> </ol> |
|---|---|

- of Natick, &c., may use a portion of same.
19. Penalty for diverting or corrupting water.
  20. City may purchase property, &c., of the Aqueduct Corporation.
  21. Water may be conveyed to East Boston, through Charlestown and Chelsea over or under tide waters, with approval of a commissioner to be appointed, and with consent of city council.
  22. Restriction.
  23. City may lay the water pipes under the bridges of the Eastern Railroad Company.
  24. City authorized to construct aqueduct from Brookline through Roxbury. Lands taken or holden liable to taxation.
  25. Streets and ways to be put in good condition. City shall indemnify Roxbury and Brookline for all damages, and reimburse all expenses.
  26. City to pay damages to all who may be damnified by the taking of land, &c.
  27. Hydrants in Roxbury and Brookline to be provided by Boston. To be kept in repair at expense of Roxbury and Brookline.
  28. Act void unless accepted by city council.
  8. Duties of president of the board.
  9. City engineer to have charge of lake, aqueducts, lands, reservoirs, &c.
  10. To make an annual report.
  11. Water registrar, how chosen, &c.
  12. To assess water rates. To visit premises of takers, make out bills, &c.
  13. To make annual report.
  14. Water rent payable in advance, January 1.
  15. Supply to be cut off in case of non-payment.
  16. Abatements may be made.
  17. Water registrar to keep books, &c.
  18. No member of the board or officer to be interested in any contract, &c., in relation to the water works.
  19. Penalty for opening hydrant, &c.
  20. For opening any pipe or reservoir, &c.
  21. For turning on or turning off the water, &c.
  22. For injuring any other reservoir, &c.
  23. Water not to be sold to parties out of the city, unless, &c.
  24. Regulations under which the water shall be taken. Takers to keep service-pipes in good repair. To prevent waste, and use no concealment. No alteration to be made, except, &c. Water not to be supplied to other parties, unless, &c. Use of hand hose restricted. Water registrar may enter premises to examine.

## ORDINANCE.

1. Cochituate Water Board, how chosen, &c.
2. Their organization.
3. Their general powers. To appoint subordinate officers, &c.
4. To make annual reports. Reports of city engineer and water registrar.
5. To make schedule of water rates.
6. Cochituate Water Board may sell or lease property, &c.
7. Bills for expenditures, how drawn, examined, &c.
25. Waste of water, penalty for.
26. Hose not to be used for washing horses, carriages, &c. Fine and penalty for.
27. Water board to have like powers. &c., over Boston Aqueduct Corporation as they have over the Boston Water Works.

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| 28. May establish such rates as they deem expedient.<br>29. Water registrar to assess the amounts and make out bills.<br>30. Water rates.<br>31. Dwelling-houses.<br>32. For model houses.<br>33. For offices having water fixtures.<br>34. For hotels, taverns, and boarding-houses.<br>35. For stores, &c.<br>36. For stables, &c.<br>37. For right to attach hose, &c.<br>38. For confectionaries, eating houses, market and fish stalls, provision shops, oyster saloons, &c.<br>39. For public baths. | 40. For printing-offices.<br>41. For steam engines.<br>42. For railroad corporations.<br>43. For steamboats.<br>44. For building purposes.<br>45. Fountains.<br>46. Bakeries.<br>47. For manufacturing, and large quantities of water.<br>48. For purposes not specified.<br>49. For estates valued together.<br>50. Meters may be used by the water board.<br>51. Water board may regulate the construction of water closets.<br>52. No charge for pipe to be used only in case of fire.<br>53. Repeal of former ordinances. |
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STATUTES.<sup>1</sup>

1. The city of Boston is hereby authorized, by and through the agency of three commissioners, to be appointed in the manner hereinafter provided, to take, hold, and convey to, into, and through the said city, the water of Long Pond, so called, in the towns of Natick, Wayland, and Framingham, and the waters which may flow into and from the same, and any other ponds

City may obtain water from Long Pond, &c., in Natick, &c.  
1846, 167, § 1.

<sup>1</sup> An act for supplying the city of Boston with pure water, was passed March 25, 1845, (Stat. 1845, c. 220,) containing the provision that the act should be void unless accepted by a majority of the legal voters of the city, in their respective wards, within sixty days from its passage. The act was rejected, by a vote of 3,670 yeas to 3,999 nays. (*Records of Returns of Votes from the several Wards, May 19, 1845.*) The Act of 1846, c. 167, given in the text, was passed March 30, 1846, and contained the following provision, viz: *Sect. 17.* The mayor and aldermen of the city of Boston shall notify and warn the legal voters of the said city, to meet in their respective wards, on such day as the said mayor and aldermen shall direct, not exceeding thirty days from and after the passing of this act, for the purpose of giving their written votes upon the question, whether they will accept the same; and if a majority of the votes so given upon the question aforesaid, shall be in the negative, this act shall be null and void. The act was accepted, April 13, 1846, by a vote of 4,637 yeas to 348 nays. (*Records of Returns of Votes from the several Wards, April 13, 1846.*) The water was introduced into the city of Boston, and the event celebrated October 25, 1848.

1846, 167, § 1.

May take and  
hold land.  
Ibid.

Shall file in reg-  
istry of deeds, a  
description of  
lands, ponds,  
&c., taken.  
Ibid.

May construct  
aqueducts,  
dams, reser-  
voirs, &c.  
Ibid. § 2.

May distribute  
water through-  
out the city, lay  
pipes, &c.  
Ibid.

and streams within the distance of four miles from said Long Pond, and any water rights connected therewith; and may also take and hold, by purchase or otherwise, any lands or real estate necessary for laying and maintaining aqueducts for conducting, discharging, disposing of, and distributing water, and for forming reservoirs; and may also take and hold any land on and around the margin of said Long Pond, not exceeding five rods in width, measuring from the verge of said pond, when the same shall be raised to the level of eight feet above the floor of the flume at the outlet thereof, and on and around the said other ponds and streams, so far as may be necessary for the preservation and purity of the same, for the purpose of furnishing a supply of pure water for the said city of Boston. The city of Boston shall, within sixty days from the time they shall take any lands or ponds or streams of water for the purposes of this act, file in the office of the registry of deeds, for the county where they are situate, a description of the lands, ponds, or streams of water so taken, as certain as is required in a common conveyance of lands, and a statement of the purpose for which taken, which said description and statement shall be signed by the said mayor.

2. The said city may, by and through the same agency, make and build one or more permanent aqueducts, from any of the aforesaid water sources, to, into, and through the said city, and secure and maintain the same by any works suitable therefor; may connect the said water sources with each other; may erect and maintain dams to raise and retain the waters therein; may make and maintain reservoirs within and without the said city; may make and establish such public hydrants, in such places as may, from time to time, be deemed proper, and prescribe the purposes for which they may be used, and may change or discontinue the same; may distribute the water throughout the city, and for this purpose may lay down pipes to any house or building in said city, the owner or owners thereof having notice and not objecting thereto; may regulate the use of the said water within and without the said city, and

establish the prices or rents to be paid therefor. And the said city may, for the purposes aforesaid, carry and conduct any aqueducts, or other works, by them to be made and constructed, over or under any watercourse, or any street, turnpike-road, railroad, highway, or other way, in such manner as not to obstruct or impede travel thereon; and may enter upon and dig up any such road, street, or way, for the purpose of laying down pipes beneath the surface thereof, and for maintaining and repairing the same; and, in general, may do any other acts and things necessary, or convenient and proper, for the purposes of this act.

3: Three commissioners shall be appointed by the city council, who shall, during their continuance in office, execute and perform, and superintend and direct, the execution and performance of, all the works, matters, and things mentioned in the preceding sections which are not otherwise specially provided for in this act; they shall be subject to such ordinances, rules, and regulations, in the execution of their said trust, as the city council may from time to time ordain and establish, not inconsistent with the provisions of this act and the laws of this commonwealth; they shall respectively hold their said offices for the term of three years next after their said appointment, unless the aqueducts and works aforesaid shall be sooner completed; but they, or either of them, after having had an opportunity to be heard in his or their defence, may be removed at any time by a concurrent vote of two thirds of each branch of the city council; and in case of a vacancy in the board of commissioners by death, resignation, or removal, such vacancy shall be filled by the appointment of another commissioner, in manner aforesaid, who shall hold his said office for the residue of the said term of three years, with all the powers and subject to all the restrictions aforesaid. A major part of said commissioners shall be a quorum for the exercise of the powers and the performance of the duties of the said office; they shall, once in every six months, and whenever required by the city council, make and present in writing, a particular report and statement of all their acts and proceedings, and of the condition and progress of the works aforesaid.

May dig up  
highways, &c.,  
when neces-  
sary.  
1846, 167, § 2.

Commissioners  
to be appointed.  
Their duties.  
Ibid. § 3.

Tenure of office.  
Ibid.

Quorum.  
Ibid.

Compensation  
of commission-  
ers.  
1846, 167, § 4.

4. Before the appointment of the commissioners aforesaid, the city council shall establish and fix the salaries, or compensation, to be paid to the commissioners for their services ; and the said salaries of the said commissioners, so established and fixed as aforesaid, shall not be reduced during their continuance, respectively, in said office.

Their powers to  
be exercised by  
the city, after  
their office shall  
cease.  
Ibid. § 5.

5. Whenever the said office of commissioners shall cease, either by the expiration of the said term of three years from the original appointment, or by the completion of the aqueducts and works mentioned in the preceding sections of this act, all the rights, powers, and authority, given to the city of Boston by this act, shall be exercised by the said city, subject to all the duties, liabilities, and restrictions herein contained, in such manner, and by such agents, officers, and servants as the city council shall from time to time ordain, appoint, and direct.

City of Boston  
shall be liable to  
pay all dama-  
ges, sustained  
by taking land,  
&c.  
Ibid. § 6.  
8 Cush. 276.  
Application to  
court in case of  
disagreement.  
Ibid.

6. The said city of Boston shall be liable to pay all damages that shall be sustained by any persons, in their property, by the taking of any land, water, or water rights, or by the constructing of any aqueducts, reservoirs, or other works for the purposes of this act. And if the owner of any land, water, or water rights, which shall be taken as aforesaid, or other person who shall sustain damage as aforesaid, shall not agree upon the damages to be paid therefor, he may apply, by petition, for the assessment of his damages, at any time within three years from the taking of the said land, water, or water rights, as aforesaid, and not afterwards, to the court of common pleas, in the county in which the same are situate ; such petition may be filed in the clerk's office of said court, in vacation or in term time, and the clerk shall thereupon issue a summons to the city of Boston, returnable, if issued in vacation, to the then next term of the said court, and if in term time, returnable on such day as the said court shall order, to appear and answer to the said petition ; the said summons shall be served fourteen days, at least, before the return day thereof, by leaving a copy thereof, and of the said petition, certified by the officer who shall serve the same, with the mayor or clerk of the said city ; and the said court may, upon default or hearing of the said city, appoint three

Court may ap-  
point three  
freeholders to

judicious and disinterested freeholders of this commonwealth, who shall, after reasonable notice to the parties, assess the damages, if any, which such petitioner may have sustained as aforesaid, and the award of the said freeholders, or of the major part of them, being returned into and accepted by the said court, shall be final, and judgment shall be rendered and execution issued thereon for the prevailing party, with costs, unless one of the said parties shall claim a trial by jury, as hereinafter provided.

7. If either of the parties, mentioned in the preceding section, shall be dissatisfied with the amount of damages awarded as therein expressed, such party may, at the term at which such award was accepted, or the next term thereafter, claim, in writing, a trial in said court, and have a jury to hear and determine, at the bar of said court, all questions of fact relating to such damages, and to assess the amount thereof; and the verdict of such jury, being accepted and recorded by the said court, shall be final and conclusive, and judgment shall be rendered and execution issued thereon; and cost shall be recovered by the said parties, respectively, in the same manner as is provided by law in regard to proceedings relating to the laying out of highways.

8. No application shall be made to the court, for the assessment of damages for the taking of any water rights, until the water shall be actually withdrawn or diverted by the said city under the authority of this act; and any person or corporation, whose water rights may be thus taken and affected, may make his application aforesaid, at any time within three years from the time when the waters shall be first actually withdrawn or diverted as aforesaid.

9. Whenever any damages shall have been sustained by any persons in their property, by the taking of any land, water, or water rights, or by the constructing of any aqueducts, reservoirs, or other works, for the purposes of this act, and of the act entitled "An act for supplying the city of Boston with pure water," chapter one hundred and sixty-seven, of the Acts and Resolves of the year eighteen hundred and forty-six, and such

assess damages.  
1846, 167, § 6.

Parties may  
claim a trial by  
jury, if dissatis-  
fied with award.  
Ibid. § 7.

See G. S. c. 43.

No application  
to be made for  
damages for  
taking water,  
until actually  
diverted, &c.  
Ibid. § 8.

Where persons  
sustaining dam-  
ages neglect to  
institute pro-  
ceedings there-  
for, the city may  
commence such  
proceedings.  
1849, 187, § 2.

1849, 187, § 2. persons shall neglect to institute proceedings against the city of Boston, according to the provisions of the said act, for the space of five months, it shall be lawful for the city of Boston to commence such proceedings, which shall go on, and be determined, in the same manner as if commenced by the persons who shall have sustained such damage. And, if such persons, on receiving due notice, shall not come in and prosecute the proceedings so instituted, judgment shall be entered against them, and they shall be forever barred from recovering any damages under said act.

How such persons shall be barred.  
Ibid.

City may tender to petitioner for damages, or bring into court, such sum as it shall think proper.  
1850, 316.

Effect of such tender or payment.  
Ibid.

City council may issue water scrip, to defray expenses.  
1846, 167, § 9.

See *post.* § 13.

See *post.* § 14.

10. In every case of a petition to the court of common pleas, by any person, for the assessment of damages, as provided in the sixth, seventh, and eighth sections above, the city of Boston by any of its officers, may tender to the complainant, or his attorney, any sum that it shall think proper, or may bring the same into court, to be paid to the complainant for the damages claimed in his petition; and if the complainant shall not accept the same, with his costs up to that time, but shall proceed in the suit, he shall be entitled to his costs up to the time of the tender, or such payment into court, and not afterwards, and the said city shall be entitled to recover its costs afterwards, unless the complainant shall recover greater damages than were so offered.

11. For the purpose of defraying all the costs and expenses of such lands, estates, waters, and water rights, as shall be taken, purchased, or held for the purposes mentioned in this act, and of constructing all aqueducts and works necessary and proper for the accomplishment of the said purposes, and all expenses incident thereto, the city council shall have authority to issue from time to time notes, scrip, or certificates of debt, to be denominated, on the face thereof, "Boston Water Scrip," to an amount not exceeding in the whole, the sum of three millions of dollars, bearing interest at a rate not exceeding the legal rate of interest in this commonwealth; and said interest shall be payable semi-annually, and the principal shall be payable at periods not more than forty years from the issuing of the said scrip, notes, or certificates respectively. And the said city

council may sell the same, or any part thereof, from time to time, at public or private sale, or pledge the same for money borrowed for the purposes aforesaid, on such terms and conditions as the said city council shall judge proper.

12. Nothing in the preceding section shall be construed to prohibit the city council of the city of Boston, from making temporary loans for the purposes therein set forth, to be redeemed within five years by the "Boston Water Scrip;" *provided*, that the amount of said scrip shall, in no case, exceed the amount named in the said section.

City council may make temporary loans, to be redeemed within five years by water scrip.  
1848, § 3.

13. In addition to the notes, scrip, or certificates of debt, authorized to be issued by the eleventh section, the city council of the city of Boston are authorized to issue from time to time notes, scrip, or certificates of debt, to be denominated on the face thereof, "Boston Water Scrip," to an amount not exceeding, in the whole, the further sum of one million five hundred thousand dollars, for the same purposes, and in the same manner, and upon the terms and conditions specified in said section.

Additional scrip may be issued by city council.  
1849, 187, § 1.  
See *ante*, § 11.

14. In addition to the sum of three millions of dollars mentioned in the eleventh section, the said city council may, whenever and so far as deemed necessary, issue and dispose of notes, scrip, or certificates of debt, in the manner prescribed in the said eleventh section, to meet all payments of interest which may accrue upon any scrip by them issued; *provided, however*, that no scrip shall be issued for the payment of interest as aforesaid, after the expiration of two years from the completion of said aqueducts and other works; but payment of all interest that shall accrue after that time shall be made from the net income, rents, and receipts for the use of the water, if they shall be sufficient for that purpose; and if not, then the payment of the deficiency shall be otherwise provided for by the city council.

They may also issue scrip for payment of interest.  
1846, 167, § 10.

But not after expiration of two years from completion of aqueducts, &c.  
*Ibid.*

All notes, scrip, and certificates of debt, to be issued as aforesaid, shall be signed by the treasurer and auditor, and countersigned by the mayor of the said city, and a record of all such notes, scrip, and certificates shall be made and kept by the said treasurer and auditor respectively.

Form of scrip.  
*Ibid.*

Record to be kept of same.  
*Ibid.*

15. The city council shall from time to time, regulate the

City council to

regulate the price of water. 1846, 167, § 11.

Net surplus income to be applied to payment of principal and interest of scrip. Ibid.

See City Docs. for 1848, No. 45. 1850, No. 13. 1852, No. 24. 1863, No. 47.

If surplus income is insufficient to pay the interest, the supreme judicial court may, on petition, &c., appoint commissioners, who may raise the price of water. 1846, 167, § 12.

price or rents for the use of water, with a view to the payment from the net income, rents, and receipts therefor, not only of the semi-annual interest, but ultimately of the principal also of the "Boston Water Scrip," so far as the same may be practicable and reasonable. And the said net surplus income, rents, and receipts, after deducting all expenses and charges of distribution, shall be set apart as a sinking fund, and shall be appropriated for and towards the payment of the principal and interest of the said scrip; and shall, under the management, control, and direction of the mayor, treasurer, and auditor of the city, or the major part of them for the time being, who shall be trustees of the said fund, be applied solely to the use and purpose aforesaid, until the said scrip shall be fully paid and discharged. And the said trustees shall, whenever thereto required by the city council, render a just, true, and full account to the said city council of all their receipts, payments, and doings under the provisions of this section.

16. At any time after the expiration of two years, from the completion of the works mentioned in the second section, and before the reimbursement of the principal of the "Boston Water Scrip" hereinbefore mentioned, if the surplus income and receipts for the use of the water distributed under the provisions of this act, at the price established by the city council, after deducting all expenses and charges of distribution, shall, for any two successive years, be insufficient to pay the accruing interest on the said scrip, then the supreme judicial court, on the petition of one hundred or more of the legal voters of the said city, praying that the said price may be raised and increased so far as may be necessary for the purpose of paying, from the said surplus income and receipts, the said accruing interest, and upon due notice of the pendency of such petition given to the said city in such manner as the said court shall order, may appoint three commissioners, who, upon due notice to the parties interested, may raise and increase the said price, if they shall judge proper, so far as may be necessary, in their judgment, for the purpose aforesaid and no farther. And the award of said commissioners, or the major part of them, being returned to the

said court, at the then next term thereof for the county of Suffolk, and accepted by the said court, shall be binding and conclusive, for the term of three years next after the said acceptance, and until the price so fixed by the commissioners shall, after the expiration of said term, be changed or altered by the city council.

17. If the surplus income and receipts for the use of the water, distributed under the provisions of this act, at the price established by the city council, after deducting all expenses and charges of distribution, shall, for any two successive years, be more than sufficient to pay the accruing interest on the "Boston Water Scrip," hereinbefore mentioned, then the supreme judicial court, on the petition of one hundred or more of the legal voters of the said city, who may deem the said price unreasonably high, and pray for the reduction thereof; and upon due notice of the pendency of said petition given to the said city in such manner as the said court shall order, may appoint three commissioners, who, upon due notice to the parties interested, may, if they shall judge proper, reduce the price established by the city council; *provided*, that such reduction shall not be so great that the surplus income and receipts aforesaid will, in the judgment of the said commissioners be thereafter insufficient for the payment of the said accruing interest. And the award of the said commissioners, or the major part of them, being returned and accepted as mentioned in the preceding section, shall be binding and conclusive in the same manner, and to the same extent, as therein provided in regard to awards made pursuant to the provisions of that section.

1846, 167, § 12.

If such income is more than sufficient, &c., the court may appoint commissioners, on petition, &c., who may reduce the price of water.  
Ibid. § 13.

Reduction shall not be so great, that such income will be insufficient, &c.  
Ibid.

And the said court may, at their discretion, order the costs on such petitions as are mentioned in this and the preceding section, and of the proceedings thereon, or any part thereof, to be paid by either of the said parties, and may enter judgment and issue executions therefor accordingly.

Costs, on such petitions.  
Ibid.

18. The occupant of any tenement shall be liable for the payment of the price or rent for the use of the water in such tenement; and the owner thereof shall be also liable, if, on being notified of such use, he does not object thereto; and if any

Occupant of tenement, and owner, both liable for price of water.  
Ibid. § 14.

Action for use of water without consent of city.  
1846, 167, § 14.

Inhabitants of Natick, &c., may use a portion of same.  
Ibid.

person or persons shall use any of the said water, either within or without the city, without the consent of the city, an action of trespass on the case may be maintained against him or them, by the said city, for the recovery of damages therefor; *provided, however,* that this act shall not be so construed as to prevent the inhabitants of Natick, Framingham, Sherburne, and Wayland, from using so much of the water hereby granted as shall be necessary for extinguishing fires, and for all ordinary household purposes, under such regulations of the said city council as may be essential for the preservation of the purity of the same.

Penalty for diverting or corrupting water.  
Ibid. § 15.

19. If any person or persons shall wantonly or maliciously divert the water, or any part thereof, of any of the ponds, streams, or water sources, which shall be taken by the city pursuant to the provisions of this act, or shall corrupt the same, or render it impure, or destroy or injure any dam, aqueduct, pipe, conduit, hydrant, machinery, or other property held, owned, or used by the said city, by the authority and for the purpose of this act; every such person or persons shall forfeit and pay to the said city three times the amount of the damages that shall be assessed therefor, to be recovered by any proper action. And every such person or persons may moreover, on indictment and conviction of either of the wanton and malicious acts aforesaid, be punished by fine, not exceeding one thousand dollars, and imprisonment not exceeding one year, or by confinement to hard labor in the state prison for a term not exceeding ten years.

1861, 220, § 1.

City may purchase property, &c., of the Aqueduct Corporation.  
G. S. 167, § 16.

20. The said city of Boston is hereby authorized to purchase and hold all the property, estates, rights, and privileges of the Aqueduct Corporation, incorporated by an act passed February twenty-seven, in the year one thousand seven hundred and ninety-five, and by any convenient mode may connect the same with their other works.<sup>1</sup>

Water may be

21. The city of Boston is authorized to convey the water of

<sup>1</sup> For acts respecting the Aqueduct Corporation, which was purchased by the city of Boston June 10, 1851, see in the *Supplement*. Stat. 1794, c. 55; 1796, c. 1; 1803, c. 35. See also City Doc. 1851, No. 46.

Long Pond to, into, and through that part of Boston called East Boston, by laying their aqueduct, or water pipes, through the city of Charlestown and town of Chelsea; and, for that purpose, may have all the rights and privileges, and shall be subject to all the liabilities mentioned in the act entitled "An act for supplying the city of Boston with pure water." And the said city of Boston may make any suitable structures for the purpose of conveying the said water over or under the tide waters within the jurisdiction of this commonwealth; *provided*, that such structure shall be approved of by a commissioner, to be appointed for that purpose by the governor and council, and to be compensated by the city of Boston; *provided, further*, that the authority granted by this section shall not be exercised without the consent of the city council of said city first had and obtained.<sup>1</sup>

conveyed to East Boston, through Charlestown and Chelsea. 1849, 187, § 3. Accepted by city council, May 28, 1849. City Records, vol. 27, p. 239. Over or under tide waters, with approval of a commissioner to be appointed, and with consent of city council. 1849, 187, § 3.

22. By the Act passed in eighteen hundred and fifty-one, chapter one hundred and twenty-one, it was provided that the control granted to the city of Boston over tide waters within the jurisdiction of this commonwealth, by the preceding section, shall be restricted to the line then occupied by them for the purpose specified in the said section.

Restriction. 1851, 121.

23. By the act passed in eighteen hundred and forty-nine, authorizing the Eastern Railroad Company to extend their road, it is declared lawful for the city of Boston, under the direction of a commissioner, to be appointed by the governor and council, and paid by the Eastern Railroad Company, to lay

City may lay the water pipes under the bridges of the Eastern Railroad Company. 1849, 201, § 7.

<sup>1</sup> By an order of the city council, passed June 11, 1849, it was ordered, that the water commissioners be authorized and empowered, by virtue of the third section of the Act of 1849, c. 187, to convey the waters of Long Pond to East Boston; *provided*, that the cost of the same shall not exceed the sum of four hundred thousand dollars; and that, in the execution of said authority, they shall have all the powers, so far as the same are proper and necessary, and be subject to all the duties and restrictions contained in the several ordinances of the city regulating the proceedings of the commissioners. *City Records*, vol. 27, p. 272.

For authority to supply the state prison with Cochituate water, see Stat. 1852, c. 316.

1849, 261, § 7.

and construct their water pipes under, or by the side of the bridges, to be constructed by said railroad corporation, for the purpose of conveying water into and through East Boston, without compensation to the said railroad corporation; *provided, however*, that said pipes shall be so laid, maintained, and repaired as not to retard, or in any manner obstruct, the regular and convenient use of said bridges, for all the uses of said railroad company.

City authorized to construct aqueduct from Brookline through Roxbury.

1859, 222, § 1.

24. The act passed April six, eighteen hundred and fifty-nine, provides as follows: The city of Boston is hereby authorized, by and through the agency of the Cochituate Water Board therein, to construct an aqueduct, or to lay a new main pipe, from its reservoir in the town of Brookline, through the said town and the city of Roxbury, to the said city of Boston, and to continue the same into and through the said city of Boston, in the manner provided in the act

See *ante*, act of 1846, c. 167.

to which this is in addition; and for this purpose may take and hold, by purchase or otherwise, any lands or real estate necessary therefor; *provided*, all lands so taken and held, or that are now held by virtue of any former act, shall be liable to taxation; and may construct said aqueduct, or lay said pipes over or under any watercourse, or any streets, turnpike roads, railroads, highways, or other ways, in such manner as not to obstruct or impede the travel thereon; and may enter upon and dig up any such roads, streets, or ways for the purpose of constructing said aqueduct or laying down said pipe beneath the surface thereof, and for maintaining and repairing the same; but always in such manner and with such care as not to render the roads, streets, or ways unsafe or unnecessarily inconvenient to the public travel thereon; *provided, however*, that the said city of Boston shall be subject to all regulations which the mayor and aldermen of the city of Roxbury or the selectmen of the town of Brookline may prescribe, as to time, place, and manner of digging up any streets or ways of public travel, for the purpose aforesaid, within their respective limits; and *provided, also*, that said city of Boston shall not construct an aqueduct, or lay a pipe, in any street or way in the city of Rox-

Lands holden liable to taxation.

1859, 222, § 1.

bury, or town of Brookline, in such places or in such manner as shall, in the opinion of the mayor and aldermen of the city of Roxbury, or the selectmen of the town of Brookline, at any time prevent, or interfere with, the construction of culverts, sewers, and drains, in such street or way. 1859, 222, § 1.

25. Whenever the said city of Boston shall dig up any street or way as aforesaid, it shall restore the same to as good order and condition as the same shall be in when such digging shall be commenced; and the said city of Boston shall, at all times, indemnify and save harmless the said city of Roxbury, and the said town of Brookline, against all damages which may be recovered against them, respectively, and shall reimburse to them respectively, all expenses which they shall incur by reason of any defect or want of repair in any street or way, caused by the construction of said aqueduct, or the laying of said pipe, or by the maintaining or repairing of the same. City to put streets and ways in good condition, and indemnify Roxbury and Brookline for all damages and reimburse all expenses. Ibid. § 2.

26. The said city of Boston shall be liable to pay all damages that shall be sustained by any persons in their property by the taking of any land or real estate, or the constructing of said aqueduct, or the laying of said pipe, as aforesaid; and any person sustaining damage as aforesaid, may have the same ascertained, determined, collected, and paid, in the manner which is provided in the sixth, seventh, and eighth sections of the act to which this is in addition. City to pay damages to all who may be damaged by the taking of land, &c. Ibid. § 3. 1846, 167. See *ante*, §§ 6, 7, 8.

27. The city of Roxbury and the town of Brookline may require the city of Boston, while constructing said aqueduct or laying down said pipe, to insert therein a number of hydrants, not exceeding six in said Roxbury, and four in said Brookline, to be used for the purpose of extinguishing fires, and for no other purpose; and the said city of Roxbury and town of Brookline shall pay the expenses of keeping in repair all such hydrants as shall be so inserted upon their respective requisitions, after the same shall have been constructed. Hydrants in Roxbury and Brookline to be provided by Boston; to be kept in repair at the expense of Roxbury and Brookline. 1859, 222, § 4.

28. This act shall not take effect until the same shall have been accepted by the city council of the city of Boston.<sup>1</sup> Act void unless accepted by the city council. Ibid. § 5.

<sup>1</sup> Accepted by the city council, May 6, 1859. See City Rec. vol. 37, p. 222.

ORDINANCE.<sup>1</sup>

Cochituate  
Water Board,  
how chosen,  
&c.  
March 17, 1862.

June 14, 1862.

Vacancy.

SECTION 1. When this ordinance shall take effect, the city council shall proceed to elect, in the manner provided by law, seven suitable persons, resident citizens of the city of Boston, to be the Cochituate Water Board, of whom four shall be citizens at large, one shall be a member of the board of aldermen, and two shall be members of the common council. The persons so elected at large shall be divided by the city council into two classes, and each class shall consist of two persons; and the persons composing the first class shall hold their office for the term of one year; those composing the second class, for the term of two years from the first Monday of January, in the year eighteen hundred and sixty-two. And the persons so elected from the board of aldermen and the common council shall respectively hold their offices for the term of one year from the same date. And after the first election, annually by concurrent vote of the city council, on the first Monday of February, or within sixty days thereafter, there shall be elected, to be members of said Cochituate Water Board, two citizens at large, to hold their office for two years, and one member of the board of aldermen and two members of the common council, to hold their office for one year, from the first Monday of April, in the year of their election. Said members shall, in addition to their said term, hold their office until others are elected in their places; but each of said members shall, at all times, be subject to removal from office by the city council for cause. Any vacancy in said Cochituate Water Board, caused by non-acceptance of office, removal, resignation, death, or otherwise, may be filled by the city council, whenever such vacancy shall exist, by concurrent vote; and the person elected to fill any vacancy shall hold his office during the term for which his predecessor was elected.

<sup>1</sup> An ordinance providing for the care and management of the Boston Water Works, passed October 31, 1850, and ordinances in addition thereto, passed September 29, 1851, December 14, 1854, December 28, 1854, April 26, 1858, December 23, 1859, January 4, 1862, and March 17, 1862. An ordinance passed March 15, 1856, was repealed March 17, 1862.

SECT. 2. The persons so chosen shall meet, and organize themselves into a board, by the choice of a president from their own number, and of a clerk, and they may make such rules and regulations for their own government, and in relation to all subordinate officers by them appointed, as they may deem expedient.

Their organization.  
Oct. 31, 1850.

SECT. 3. The Cochituate Water Board shall have and exercise all the powers, vested in the city council by an act of the legislature of Massachusetts, passed on the thirtieth day of March, in the year eighteen hundred and forty-six, entitled an Act for supplying the city of Boston with pure water, and by any acts in addition thereto, so far as the same can be legally delegated; and they shall, more especially, have the power to appoint all necessary subordinate officers, agents, and assistants, and may fix their compensation, and of the clerk before mentioned; *provided*, that the same shall not exceed in the whole the sum appropriated therefor by the city council; but all the powers mentioned in this section shall be subject to any limitations and restrictions contained in the ordinances, regulations, and orders of the city council.

Their general powers.  
Ibid.

See 1846, c. 167.

To appoint subordinate officers, &c.  
Oct. 31, 1850.

SECT. 4. The Cochituate Water Board, on or before the fifteenth day of January, annually, shall present to the city council a report, containing a statement of the condition of all the water works, and of the lands and other property connected therewith, with an account of all receipts and expenditures, together with any information or suggestions which they may deem important and they shall, at the same time transmit to the city council the report of the city engineer, and the water registrar, mentioned in the tenth and thirteenth sections.

To make annual reports.  
Ibid.

Reports of city engineer and water registrar.  
Ibid.

SECT. 5. The Cochituate Water Board, whenever requested by the city council, shall prepare and send to the city council a schedule of water rates.

Schedule of water rates.  
Ibid.

SECT. 6. The Cochituate Water Board are authorized to sell or lease such of the property connected with the water works as they may deem expedient, subject to the approval of the mayor; and all necessary deeds and leases shall be executed by the mayor and countersigned by the president of the board.

Cochituate Water Board may sell or lease property, &c.  
Ibid.

Bills for expenditures, how drawn, examined, &c.  
Oct. 31, 1850.

SECT. 7. All bills for expenditures by the Cochituate Water Board shall be drawn for by the president, examined by the auditor, and approved by the committee of accounts, before they are paid by the treasurer.

Duties of president of the board.  
Ibid.

SECT. 8. The president of the Cochituate Water Board shall exercise a general supervision over all the water works, and the materials and property connected therewith, and over all subordinate officers and agents. In case of his absence, or inability, his duties may be performed by a president *pro tempore*, to be chosen by the said board.

City engineer to have charge of lake, aqueducts, lands, reservoirs, &c.  
Ibid.

SECT. 9. The city engineer shall take such charge of Lake Cochituate, the aqueducts, lands, reservoirs, and other works and property connected with the water works, as the Cochituate Water Board may from time to time direct; and he shall perform all such services in relation thereto as may be required of him by the Cochituate Water Board, or the city council.

To make an annual report.  
Ibid.

SECT. 10. The city engineer, on or before the fifth day of January, annually, shall present to the Cochituate Water Board a report of the general condition of the water works, with a detailed statement of all expenditures in his department relating to the same, and such other matters as he or the said board may deem expedient.

Water registrar, how chosen, &c.  
Ibid.  
June 14, 1862.

SECT. 11. There shall be elected annually on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a water registrar who shall be a citizen of Boston, who shall hold his office for one year from the first Monday in April of the year in which he shall be elected, and until a successor is elected and qualified, or he is removed. He shall be removable by the city council, who may fill any vacancy at any time for the unexpired term.

To assess water rates.  
Oct. 31, 1850.

SECT. 12. The water registrar, under the direction and control of the Cochituate Water Board, shall assess the water rates, according to the tariff established by the city council. He shall, once in each year, personally visit the premises of every person who takes the water, and shall make out and distribute all bills for the same, and he shall exercise a constant supervision over

To visit premises of takers, make out bills, &c.

the use of the water, and attend to the enforcement of all regulations relative thereto. Oct. 31, 1850.

SECT. 13. The water registrar, on or before the fifth day of January, annually, shall present to the Cochituate Water Board a report, containing a statement of the number of water-takers, the number of cases where the water has been cut off, the number and amount of abatements, the expenditures in his department, and such other matters as he or the said board may deem expedient. To make annual report. Ibid.

SECT. 14. The annual rent for the use of the water shall be payable to the city treasurer in advance, on the first day of January in each year. All charges for specific supplies, or for fractional parts of the year, shall be payable in advance, and before the water is let on. Water rent payable in advance on the first day of January. Ibid.

SECT. 15. In all cases of non-payment of the water rent for sixty days after the same is due, the water registrar shall cut off the supply; and the water shall not again be let on, either for the present or any subsequent occupant, except upon the payment of the amount due, together with the sum of two dollars; *provided*, that, in cases of specific supplies, or for fractional parts of the year, where the water has been let on, it may be cut off immediately, after notice given at the place that the rent is not paid, and may be let on again upon the condition before mentioned. And the foregoing provisions shall apply, when two or more parties take the water through the same service-pipes, although one or more may have paid the proportion due from him or them. Supply to be cut off in case of non-payment. Ibid. Proviso. Ibid.

SECT. 16. The water registrar, under the control of the Cochituate Water Board, may make abatements in the water rents, in all proper cases. Abatements may be made. Ibid.

SECT. 17. The water registrar shall keep suitable books, in which shall be entered the names of all persons who take the water, the kind of building, the name and number of the street, the nature of the use, the number of taps, and the amount charged, which shall be always open to the inspection of the Cochituate Water Board and any committee of the city council. He shall perform such other services as may be required of him by the city council, or the Cochituate Water Board. Water registrar to keep books, &c. Ibid.

No member of the board, or officer, to be interested in any contract, &c., in relation to the water works.  
Oct. 31, 1850.

SECT. 18. No member of the Cochituate Water Board, and no person appointed to any office, or employed, by virtue of this ordinance, or of the acts of the legislature mentioned in the third section, shall be interested, directly or indirectly, in any contract, bargain, sale, or agreement, in relation to the water works, or any matter or thing connected therewith, wherein the city is interested, without an express vote of the city council; and any and all contracts, bargains, sales, or agreements, made in violation of this section, shall be utterly void as to the city.

Penalty for opening hydrant, &c.  
Ibid.

SECT. 19. If any person shall open any hydrant within the city of Boston, or lift or remove the cover of the same, without the license of the Cochituate Water Board, or of the city engineer or the water registrar, except in case of fire, he shall be liable to a penalty of not less than three nor more than fifty dollars.

For opening any pipe, or reservoir, &c.  
Ibid.

SECT. 20. If any person shall make any opening or connection with any pipe or reservoir, without the license mentioned in the preceding section, he shall be liable to a penalty of not less than three nor more than fifty dollars.

For turning on or turning off the water, &c.  
Ibid.

SECT. 21. If any person shall turn on or turn off the water in any of the water-pipes or reservoirs, without the license mentioned in the nineteenth section, he shall be liable to a penalty of not less than three nor more than fifty dollars.

For injuring any other reservoir, &c.  
Ibid.

SECT. 22. Any person who shall injure any public reservoir, not connected with the Cochituate Water Works, or who shall break and enter the same, and draw off or cause to be removed, any of the water therefrom, except in case of fire, or unless duly authorized by the board of aldermen, or chief engineer of the fire department, shall forfeit and pay a sum not less than one dollar nor more than fifty dollars.

Water not to be sold to parties out of the city, unless, &c.  
Ibid.

SECT. 23. The water shall not be sold or delivered to any parties out of the limits of the city, unless by special vote of the city council, except in cases where contracts have already been entered into and arrangements made for that purpose.

Regulations under which the water shall be taken.  
Ibid.

SECT. 24. The following regulations shall be considered a part of the contract with every person who takes the water; and every such person, by taking the water, shall be considered to

express his assent to be bound thereby. They shall be printed Oct. 31, 1850. upon every bill for water rent, and whenever any one of them is violated, the water shall be cut off from the building or place of such violation, although two or more parties may receive the water through the same pipe, and shall not be let on again, except by the order of the Cochituate Water Board, and on the payment of two dollars; and in case of any such violation, the said board shall have the right to declare any payment made for the water, by the person committing such violation, to be forfeited, and the same shall thereupon be forfeited.

The said regulations are as follows:—

*One.* All persons taking the water shall keep the service pipes within their premises, including any area beneath the sidewalk, in good repair, and protected from frost, at their own expense; and they will be held liable for all damage which may result from their failure to do so. Takers to keep service pipes in good repair. Ibid.

*Two.* They shall prevent all unnecessary waste of water, and there shall be no concealment of the purposes for which it is used. To prevent waste, and use no concealment.

*Three.* No alteration shall be made in any of the pipes or fixtures inserted by the city, except by its agents, who are to be allowed to enter the premises supplied, to examine the apparatus, and to ascertain whether there is any unnecessary waste. No alteration to be made, except, &c.

*Four.* No water is allowed to be supplied to parties not entitled to the use of it under the city ordinances, unless by special permission. Water not to be supplied to other parties, unless, &c.

*Five.* The use of the hand-hose is restricted to one hour before eight of the clock in the forenoon, and one hour after sunset. Use of hand-hose restricted.

*Six.* The water registrar may enter the premises of any water-taker, to examine the quantity used, and the manner of use. Water registrar may enter premises to examine.

SECT. 25. The owner or occupant of any premises where an unnecessary waste of Cochituate water occurs, shall be liable to a fine of two dollars, and shall be notified thereof in writing, and if such waste shall not be prevented, and the fine aforesaid Waste of water, fine and penalty for, April 26, 1858.

April 26, 1858. paid, within two days from the time when said notice is given, the water shall be cut off from the said premises and shall not be again let on until the waste be stopped and the fine paid, together with an additional sum of two dollars for cutting off and letting on the water; and in case of a second offence during the same year, a fine of four dollars shall be imposed, and if not paid as before mentioned, the water shall be cut off and not again let on until the cause of complaint is removed, and the fine paid, together with two dollars for cutting off and letting on the water; and in case of a third or subsequent offence the water shall be cut off and shall not again be let on, except by a vote of the Cochituate Water Board, and the payment of such fine, not exceeding ten dollars, as the said board may impose.

Hose not to be used for washing horses, carriages, &c., fine and penalty for. Ibid. Jan. 4, 1862.

SECT. 26. No hose shall be attached or used in any stable for washing horses or carriages, or for any other purpose whatsoever, except for extinguishing fires, under a penalty of ten dollars for each offence; and if this penalty shall be incurred and shall not be paid within two days after demand thereof shall be made at such stable, the water shall be cut off from such stable, and shall not be let on again until said penalty shall be paid, and also the additional sum of two dollars for cutting off and letting on the water.

Water Board to have like powers, &c., over Boston Aqueduct Corporation as they have over the Boston Water Works. Sept. 29, 1851. May establish such rates as they deem expedient. Ibid.

SECT. 27. The Cochituate Water Board shall have the like powers and perform the like duties in relation to the property, estates, rights, and privileges of the Boston Aqueduct Corporation, now belonging to the city, which they have and perform in relation to the Boston Water Works.

SECT. 28. The said water board shall also have power to adopt such lawful regulations, establish such water rates, and make such agreements as they may deem expedient for the sale and delivery of the water from Jamaica Pond to any persons in the city of Roxbury.

Water registrar to assess the amounts and make out bills. Ibid.

SECT. 29. It shall be the duty of the water-registrar under the direction of the said water board, to assess the amounts to be paid according to the said rates or agreements, and to make out and distribute bills therefor, and to perform the like duties in relation to the same as he is now required to do in relation to the said Boston Water Works.

SECT. 30. The following rates shall be charged annually for the use of the Cochituate water. Water rates.  
Nov. 15, 1859.

SECT. 31. Every dwelling-house shall be charged,	Dwelling- houses. Ibid.
when valued for the assessment of taxes at \$1,000, or any less sum, and occupied by one family only . . . . .	\$ 6 00
When occupied by two families . . . . .	8 00
When occupied by three families . . . . .	10 00
When valued for the assessment of taxes over \$1,000, and not over \$2,000, and occupied by one family only, . . . . .	7 00
When occupied by two families . . . . .	9 00
When occupied by three families . . . . .	11 00
When valued for the assessment of taxes over \$2,000, and not over \$3,000, and occupied by one family only . . . . .	8 00
When occupied by two families . . . . .	10 00
When occupied by three families, . . . . .	12 00
When valued for the assessment of taxes over \$3,000, and not over \$4,000, and occupied by one family only . . . . .	9 00
When occupied by two families . . . . .	11 00
When occupied by three families . . . . .	13 00
When valued for the assessment of taxes over \$4,000, and not over \$5,000, and occupied by one family only . . . . .	10 00
When occupied by two families . . . . .	12 00
When occupied by three families . . . . .	14 00
When valued for the assessment of taxes over \$5,000, and not over \$6,000, and occupied by one family only . . . . .	11 00
When occupied by two families . . . . .	13 00
When occupied by three families . . . . .	15 00
When valued for the assessment of taxes over \$6,000, and not over \$7,000, and occupied by one family only . . . . .	12 00
When occupied by two families . . . . .	14 00
When occupied by three families . . . . .	16 00

Dwelling-  
houses.  
Nov. 15, 1859.

When valued for the assessment of taxes over \$ 7,000, and not over \$ 8,000, and occupied by one family only . . . . .	\$ 13 00
When occupied by two families . . . . .	15 00
When occupied by three families . . . . .	17 00
When valued for the assessment of taxes over \$ 8,000, and not over \$ 9,000, and occupied by one family only . . . . .	14 00
When occupied by two families . . . . .	16 00
When occupied by three families . . . . .	18 00
When valued for the assessment of taxes over \$ 9,000, and not over \$ 10,000, and occupied by one family only . . . . .	15 00
When occupied by two families . . . . .	17 00
When occupied by three families . . . . .	19 00
When valued for the assessment of taxes over \$ 10,000, and not over \$ 11,000, and occupied by one family only . . . . .	16 00
When occupied by two families . . . . .	18 00
When occupied by three families . . . . .	20 00
When valued for the assessment of taxes over \$ 11,000, and not over \$ 12,000, and occupied by one family only . . . . .	17 00
When occupied by two families . . . . .	19 00
When occupied by three families . . . . .	21 00
When valued for the assessment of taxes over \$ 12,000, and not over \$ 13,000, and occupied by one family only . . . . .	18 00
When occupied by two families . . . . .	20 00
When occupied by three families . . . . .	22 00
When valued for the assessment of taxes over \$ 13,000, and not over \$ 14,000, and occupied by one family only . . . . .	19 00
When occupied by two families . . . . .	21 00
When occupied by three families . . . . .	23 00
When valued for the assessment of taxes over \$ 14,000, and not over \$ 15,000, and occupied by one family only . . . . .	20 00

When occupied by two families . . . . .	\$ 22 00	Dwelling-houses.
When occupied by three families . . . . .	24 00	Nov. 15, 1859.
When valued for the assessment of taxes over \$ 15,000, and not over \$ 16,000, and occupied by one family only . . . . .	21 00	
When occupied by two families . . . . .	23 00	
When occupied by three families . . . . .	25 00	
When valued for the assessment of taxes over \$ 16,000, and not over \$ 17,000, and occupied by one family only . . . . .	22 00	
When occupied by two families . . . . .	24 00	
When occupied by three families . . . . .	26 00	
When valued for the assessment of taxes over \$ 17,000, and not over \$ 18,000, and occupied by one family only . . . . .	23 00	
When occupied by two families . . . . .	25 00	
When occupied by three families . . . . .	27 00	
When valued for the assessment of taxes over \$ 18,000, and not over \$ 19,000, and occupied by one family only . . . . .	24 00	
When occupied by two families . . . . .	26 00	
When occupied by three families . . . . .	28 00	
When valued for the assessment of taxes over \$ 19,000, and not over \$ 20,000, and occupied by one family only . . . . .	25 00	
When occupied by two families . . . . .	27 00	
When occupied by three families . . . . .	29 00	
When valued for the assessment of taxes over \$ 20,000, and not over \$ 21,000, and occupied by one family only . . . . .	26 00	
When occupied by two families . . . . .	28 00	
When occupied by three families . . . . .	30 00	

When a house is occupied by more than three families, the charge shall be the same as for three families.

In addition to the foregoing rates there shall be charged to each dwelling-house in which a water-closet or bathing-tub is used, the sum of . . . . . \$ 5 00

Model houses.  
Nov. 15, 1859.

SECT. 32. The following rates for the use of the Cochituate water in model houses, so called, shall be hereafter charged, viz: For each tenement having water fixtures within the same, three dollars annually; and for each tenement not having water fixtures within the same, but taking the water from general fixtures, used in common with other tenements, two dollars annually. And in addition to the foregoing rates there shall also be charged for each such tenement in which a water-closet or bathing-tub is used, three dollars annually.

Offices.  
Ibid.

SECT. 33. The following rates for the use of the Cochituate water in buildings used and occupied for offices, shall be charged, viz: For each office having water fixtures within the same, five dollars annually; and for each office taking the water from fixtures used in common with other offices, two dollars annually. And in addition to these rates there shall be charged for each pan or self-acting water-closet, three dollars, and for each hopper water-closet, five dollars annually.

Hotels, &c.  
Ibid.

SECT. 34. Hotels, taverns, and boarding-houses, (said boarding-houses being valued for the assessment of taxes over \$ 15,000,) not including water for baths or for uses without the house, shall be charged for each bed for boarders and lodgers within the same . . . \$ 3 00

*Provided*, that in no case shall any hotel, tavern, or boarding-house be charged less than if a private dwelling-house.

Stores, shops,  
&c.  
Ibid.

SECT. 35. For each tenement occupied as a store, warehouse, office, shop, or for purposes not included in any other classification, and not requiring more than an ordinary supply of water . . . \$ 6 00 to 25 00

For each water-closet more than one, supplied for the above, \$ 5.00 additional.

And for each urinal, wash hand-basin or sink, more than one, \$ 2.50 additional.

Stables, &c.  
Ibid.

SECT. 36. Private stables, including water for washing carriages . . . . . 6 00

And for each horse over two . . . . . 2 00

Livery stables, including water for washing carriages, for each horse . . . . . 2 00

Omnibus stables, for each horse . . . . .	\$ 1 50	Nov. 15, 1859.
Truckmen's stables, for each horse . . . . .	1 25	
<i>Provided</i> , that in no case shall any stable be charged less than . . . . .	5 00	
SECT. 37. The right to attach a hose, of not more than five eighths of an inch orifice, for washing windows or sprinkling streets, in addition to the charge for other uses, not less than . . . . .	3 00	Hose for washing windows and sprinkling streets. Ibid.
But no hose shall be attached, or used in any stable, for washing horses or carriages, or for any other purpose whatever, except for extinguishing fires.		
SECT. 38. Refectories, confectioneries, eating-houses, market and fish stalls, provision shops, refreshment and oyster saloons, according to the quantity of water used, from . . . . .	\$ 8 00 to 50 00	Refectories, eating houses, stalls, provision shops, saloons, &c.
SECT. 39. Public baths, for each tub . . . . .	5 00	Baths.
SECT. 40. Every printing-office, according to the number of presses used, not including the supplying of a steam engine, from . . . . .	\$ 6 00 to 40 00	Printing-offices.
SECT. 41. Stationary steam engines, working not over twelve hours a day, shall be charged by the horse power, as follows: For each horse power up to and not exceeding ten, the sum of ten dollars; for each exceeding ten and not over fifteen, the sum of eight dollars; for each horse power over fifteen, the sum of six dollars.		Steam engines.
SECT. 42. Every railroad corporation for supply of locomotive engines, according to the quantity used as ascertained by meters or otherwise, and also for supply of passenger stations . . . . .		Railroads.
SECT. 43. Steamboats shall be charged upon the estimated quantity of water consumed, and at the same rate as charged for manufacturing purposes; <i>provided</i> , however, that no water shall be allowed for washing purposes, except by special permission from the Cochituate Water Board, under a penalty of ten dollars.		Steamboats.
SECT. 44. For building purposes, for each cask of lime, seven cents.		Building purposes.

Fountains.  
Nov. 15, 1859.

SECT. 45. Fountains are only to be supplied with water at the discretion of the Cochituate Water Board; and shall be charged upon the estimated quantity used each day, for each one hundred gallons daily consumption . . . . . \$ 5 00

Bakeries.

SECT. 46. Bakeries. For the average daily use of flour, for each barrel the sum of three dollars per annum; *provided*, that in no case shall any bakery be charged less than six dollars.

For manufac-  
turing and other  
business re-  
quiring a large  
quantity of  
water.  
Ibid.

SECT. 47. All manufacturing and other business requiring a large quantity of water shall be charged therefor, for one hundred gallons, on the average estimated quantity during the year; the year to be estimated three hundred days, as follows:

When the quantity used averages five hundred gallons per day, or less, at the rate of six cents per one hundred gallons.

When the quantity averages from five hundred to one thousand gallons per day, at the rate of five and two thirds cents per one hundred gallons.

When the quantity averages from one thousand to two thousand gallons per day, at the rate of five and one third cents per one hundred gallons.

When the quantity averages from two thousand to three thousand gallons per day, at the rate of five cents per one hundred gallons.

When the quantity averages from three thousand to four thousand gallons per day, at the rate of four and two thirds cents per one hundred gallons.

When the quantity averages from four thousand to five thousand gallons per day, at the rate of four and one third cents per one hundred gallons.

When the quantity averages from five thousand to six thousand gallons per day, at the rate of four cents per one hundred gallons.

When the quantity averages from six thousand to seven thousand gallons per day, at the rate of three and two thirds cents per one hundred gallons.

When the quantity averages from seven thousand to eight thousand gallons per day, at the rate of three and one third cents per one hundred gallons. Nov. 15, 1859.

When the quantity averages from eight thousand to ten thousand gallons per day, at the rate of three cents per one hundred gallons.

When the quantity used exceeds ten thousand gallons per day, the price shall be fixed by the water registrar, but in no case at less than two cents per one hundred gallons.

SECT. 48. When water is required for purposes which are not specified in the foregoing tariff, the rate shall be fixed by the Cochituate Water Board. For purposes not specified, how fixed. Ibid.

SECT. 49. Whenever two or more dwelling-houses, or other estates, are valued together for the assessment of taxes, it shall be the duty of the water registrar, under the direction of the Cochituate Water Board, to make a separate valuation of the same; and whenever a portion only of any estate is justly chargeable for any water rate, it shall be the duty of the water registrar to make a proper valuation of the said portion; and the water rates hereinbefore provided shall apply to such valuations respectively. For estates valued together. Ibid.

SECT. 50. The Cochituate Water Board shall have power to ascertain by meters the quantity of water used in any case; and the proprietors, or persons having charge of the hotels, taverns, and boarding-houses, mentioned in the thirty-fourth section shall also have power to place within their premises, at their own expense, a sufficient water meter to be approved by the water registrar, for the purpose of measuring the quantity of water by them respectively used. And when in any case the quantity used shall be ascertained and measured in the manner before mentioned, the Cochituate Water Board may establish a water rate therefor, instead of the specific rate hereinbefore established; *provided, however*, that the said rates shall in no case be less than that hereinbefore directed to be charged to brewers, distillers, and other business requiring a large supply, for uses not specified under specific regulations; and *provided, further*, that in all cases where the consumption of Meters may be used by the water board. Ibid. Dec. 23, 1859.

Dec. 23. 1859. water is ascertained and computed by meters, the water registrar shall render bills quarterly, and such bills shall be paid within ten days thereafter.<sup>1</sup>

Water board may regulate the construction of water closets. Nov. 15, 1859. SECT. 51. The Cochituate Water Board shall have power to establish such regulations as they may deem expedient, for the construction of water-closets hereafter ; and the water shall not be supplied to any building, unless the said water-closets shall be made conformable to the said regulations.

No charge for pipes to be used only in case of fire. Ibid. SECT. 52. No charge shall be made for the right to insert a pipe of not more than one inch in diameter, at the expense of the water-taker, and to be used only in case of fire.

Repeal of former ordinances. Ibid. SECT. 53. All ordinances and parts of ordinances inconsistent with this are hereby repealed.

WEIGHTS AND MEASURES.

STATUTES.

- |   |   |
|---|---|
| <ol style="list-style-type: none"><li>1. Mayor and aldermen may appoint sealers of weights and measures.</li><li>2. Sealers of weights, &amp;c., shall keep an office where weights, measures, &amp;c., shall be sent to be sealed.</li><li>3. Sealer shall go to houses, stores, &amp;c., of such as neglect to bring in weights, &amp;c., and shall seal the same; double fees and expenses; penalty for refusing to have weights, &amp;c., sealed; penalty for using same without sealing; penalty for altering same.</li><li>4. What weights, measures, and balances to be authorized standards.</li><li>5. State treasurer to furnish towns with sets.</li></ol> | <ol style="list-style-type: none"><li>6. County, city, and town treasurers to provide for safe-keeping, &amp;c.</li><li>7. Penalty on treasurers for neglect.</li><li>8. Treasurers to have standards proved. Penalty.</li><li>9. Each town sealer to have set of standards.</li><li>10. Sealers accountable to towns for preservation of standards.</li><li>11. Treasurers, deputies, and sealers, to have seal. Form of.</li><li>12. Sealers annually to notify inhabitants, &amp;c., to have weights, &amp;c., proved.</li><li>13. Sealers to annually visit and prove platform, &amp;c., not to remove standards, &amp;c.</li><li>14. Penalty for neglect.</li><li>15. Fees of sealers.</li></ol> |
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<sup>1</sup> The above proviso was passed December 23, 1859.

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| <p>16. Vibrating steelyards allowed to be used, if sealed.</p> <p>17. Penalty for using unsealed weights, &amp;c.</p> <p>18. "Hundred weight" to be construed the net hundred.</p> <p>19. Rules for weighing. Penalty for violation. Who to be deemed public weighers.</p> <p>20. Provisions respecting measures for salt and grain.</p> <p>21. Sealers required to go to houses, stores, &amp;c., to seal weights, &amp;c.</p> <p>22. Penalty on parties refusing to have weights, &amp;c., sealed.</p> <p>23. Penalty for altering or using any sealed weights or measures, and using the same.</p> <p>24. Sealers may be paid salaries by cities, &amp;c.</p> <p>25. Sealers may be removed from office in cities.</p> <p>26. Milk cans not to be sealed that hold a fractional part of a quart.</p> | <p>27. Act to be accepted by city, &amp;c.</p> <p>28. Weighers of boilers and heavy machinery may be appointed by board of aldermen, &amp;c.; fees; removal.</p> |
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## ORDINANCE.

1. Sealers of weights and measures to be appointed in March or April.
2. Sealer to be paid by salary, and give bond.
3. Sealer shall keep a book and make a record of his doings.
4. Sealers shall collect and pay over fees quarterly.
5. Sealer shall not be agent for selling scales, &c.
6. City shall provide office and transportation.
7. An assistant may be appointed when necessary.

## STATUTES.

1. The selectmen of each town shall annually, in March or April, appoint the following town officers, unless the inhabitants at their annual meeting choose them :—

Sealer of weights and measures, &c.  
G. S. 18, § 37.

One sealer of weights and measures, and as many more as the inhabitants at their annual meeting determine, and they may also appoint a gauger of liquid measures; and the selectmen may at any time remove such sealers or gaugers, and appoint others in their places.<sup>1</sup>

See *post.* § 25.

2. By the Statute of eighteen hundred and seventeen, chapter fifty, it was provided that it shall be the duty of the sealer

Sealer of weights and measures shall

<sup>1</sup> Similar provisions to those stated in § 1 in the text, were contained in Stat. 1799, c. 60, which, although afterwards repealed by the Revised Statutes, was in force at the time of the passage of the Statute of 1821, c. 110, the first City Charter. By § 33 of the Statute of 1854, c. 448, the new City Charter, all the powers theretofore vested in the selectmen of the town of Boston, and of the mayor and aldermen, were vested in the board of aldermen. See *ante*, p. 14, § 33.

keep a house or office, where weights, measures, &c., shall be sent to be sealed.  
1817, 50, § 1.

of weights and measures within and for the town of Boston, to be provided with a house, or office, and to which all persons using scale beams, steelyards, weights, or measures within the town of Boston, in trade, for the purpose of buying or selling any article, shall be required, after notice thereof shall have been given in two or more of the newspapers published within the said town<sup>1</sup> to send annually their scale beams, steelyards, weights, and measures, for the purpose of having the same tried, proved, and sealed, as provided in the Act of seventeen hundred and ninety-nine, chapter sixty.<sup>1</sup>

Sealer shall go to houses, stores, and shops of such as neglect to bring in weights, measures, &c., and shall seal the same.  
Ibid. § 2.

3. It was also provided by the same act, that the said sealer is authorized and required to go to the houses, stores, and shops of all such merchants, innholders, traders, retailers, and of all other persons living or residing within the said town of Boston, using beams, steelyards, weights, or measures, for the purpose of buying and selling, as shall neglect to bring or send the same to the house or office of the sealer aforesaid; and there, at the said houses, stores, and shops, on having entered the same with the assent of the occupant thereof, to try, prove, and seal the same, or to send the same to his said house or office to be tried, proved, and sealed, and shall be entitled to demand and receive therefor, double the fees he would be entitled to demand and receive for the same, if such beams, steelyards, weights, and measures had been sent to his said house or office, and all expenses attending the removal and transportation of the same; and if any such person or persons shall refuse to have his, her, or their beams, steelyards, weights, or measures so tried, proved, and sealed, the same not having been tried, proved, and sealed within one year preceding such refusal, he, she, or they shall forfeit and pay ten dollars for each offence; the one moiety to the use of the said town of Boston, the other moiety of the same to the sealer. And if any such person or persons shall use any beam, steel-

Double fees and expenses.

Penalty for refusal to have weights, measures, &c., sealed.

Penalty for

<sup>1</sup> This section referred, for the manner of sealing, and fees to be demanded, to Stat. 1799, c. 60, which was repealed by the Revised Statutes. Its provisions, with several modifications, were incorporated in Rev. Stats. c. 30, and several additional statutes upon the subject have been passed. Whether §§ 2, 3 in the text were not in effect repealed by the Rev. Stats. c. 30, — *quære*.

yard, weight, or measure which shall not conform to the public standard, the same not having been tried, proved, and sealed within one year preceding such use of the same, he, she, or they shall forfeit and pay ten dollars for each offence; the one moiety to the use of said town of Boston, and the other moiety of the same to the informer. And if any such person or persons shall alter any beam, steelyard, weight, or measure after the same shall have been tried, proved, and sealed, so as that the same shall, by such alteration be made not to conform to the public standard, and shall fraudulently make use of the same, he, she, or they shall forfeit and pay fifty dollars for each offence; the one moiety to the use of the said town of Boston, and the other moiety of the same to the informer.

using same  
without  
sealing.  
1817, 50, § 2.

Penalty for  
altering same.  
See *post*. § 23.

4. This section and the fifteen following sections contain the provisions of the General Statutes, relating to the sealing of weights and measures. The weights, measures, and balances received from the United States, and now in the treasury of the commonwealth, to wit, one half bushel, one wine gallon, one wine quart, one wine pint, one wine half pint, one yard measure; a set of avoirdupois weights consisting of fifty, twenty-five, twenty, ten, five, four, three, two, and one pounds, and from eight ounces down to one drachm; one set of troy weights, from five thousand pennyweights down to half a grain, and from one pound down to the ten-thousandth part of an ounce; and three sets of balances; also the measures caused to be made by the treasurer and now in the treasury, to wit, one of eight quarts, one of four quarts, one of two quarts, and one of one quart, dry measure, shall be, remain, and be used, as the sole authorized public standards of weights and measures.<sup>1</sup>

What weights,  
measures, and  
balances to be  
authorized  
standards.  
U. S. Const. art.  
1, § 8.  
G. S. 51, § 1.

5. The treasurer shall furnish to each town hereafter incorporated, at a cost not exceeding one hundred and fifty dollars, a complete set of standard weights, measures, and bal-

Treasurer to  
furnish towns  
with sets.  
*Ibid*. § 4.

<sup>1</sup> Gen. Stats. c. 51, §§ 2, 3, omitted in the text, make provision for the keeping and replacing of the standard weights and measures, and for the appointment by the treasurer of a deputy, &c.

G. S. 51, § 4.      ances, such as have been furnished to other towns, made to conform as near as practicable to the models caused to be made by the treasurer as town standards. The expense of transportation shall be defrayed by the town.

County, city, and town treasurers to provide for safe-keeping, &c. Ibid. § 5.      6. The several county, city, and town treasurers shall, at the expense of their respective counties, cities, and towns, provide therein places for the safe and suitable keeping and preservation of the weights, measures, and balances, furnished by the commonwealth, which shall be used only as standards. They shall have the care and oversight thereof; shall see that they are kept in good order and repair; and if any portion of them are lost, destroyed, or irreparably damaged, shall at the expense of the county, city, or town, replace the same by similar weights, measures, or balances.

Penalty on treasurers for neglect. Ibid. § 6.      7. Each treasurer who neglects to provide a suitable place for keeping such weights, measures, and balances, or to keep them in good order and repair, or who suffers any of them through his neglect to be lost, damaged, or destroyed, shall forfeit two hundred dollars, to be recovered by indictment.

Treasurers to have standards proved. Penalty. Ibid. § 7.      8. Each treasurer shall once at least in every ten years have the standards in his custody tried, adjusted, and sealed by the treasurer of the commonwealth or his deputy; the expense whereof shall be paid by the respective counties, cities, and towns. Every treasurer who neglects to have the standards under his charge so sealed, shall forfeit a sum not exceeding fifty dollars.

Each town sealer to have set of standards. Ibid. § 8.      9. When a city or town votes to have more than one sealer of weights and measures, the treasurer shall, at the expense thereof, procure and preserve the necessary additional seals, weights, and measures, before specified; so that each sealer may have a complete set of the same.

Sealers accountable to towns for preservation of standards. Ibid. § 9.      10. Every sealer of weights and measures shall receive of the treasurer a set of the standards and seal, and shall give him a receipt therefor, expressing the condition in which the same are; and he shall be accountable to the city or town for the due preservation of the same in the like condition, until he redelivers them to the treasurer.

11. The treasurer of the commonwealth and his deputy, the county treasurers, and the city and town sealers, shall each keep a seal for their several uses. The seals of the treasurer and of his deputy shall be the letters *C. M.*, those of the county treasurer shall be the initial and final letters of their respective counties, followed by the letters *Co.*; those of city and town sealers, the name of their respective cities or towns, or such intelligible abbreviation thereof as the mayor and aldermen or selectmen may prescribe.

Treasurers,  
deputies, and  
sealers to have  
seal.  
Form of.  
G. S. 51, § 10.

12. Every sealer of weights and measures shall annually in May advertise in some newspaper, or post up notifications in different parts of the city or town, for every inhabitant who uses weights and measures for the purpose of buying and selling, and for public weighers who have the same, to bring in their measures, weights, balances, scales, and beams to be adjusted and sealed; and he shall forthwith adjust and seal all weights and measures brought to him for that purpose.

Sealers to noti-  
fy inhabitants,  
&c., to have  
weights, &c.,  
proved.  
Ibid. § 11.

13. The sealers of each city and town shall go annually to every hay scale or platform balance which cannot be readily removed, and try, adjust, and seal the same. No sealer, except for the purposes of this section, shall carry his standards of weights, measures, or scales from one place to another, for the purpose of adjusting others.

Sealers to visit  
and prove hay  
scale, &c.  
Sealers not to  
remove stand-  
ards, &c.  
Ibid. § 12.

14. For every neglect of any duty prescribed in the three preceding sections, the sealer shall forfeit a sum not exceeding twenty dollars.

Penalty for  
neglect.  
Ibid. § 13.

15. Each sealer of weights and measures, including the deputy of the treasurer and county treasurers, shall receive a fee of three cents for every weight, measure, scale, beam, or balance by him sealed, except platform balances. For sealing each platform balance weighing five thousand pounds and upwards, the sealer shall receive one dollar, and for each platform balance weighing less, fifty cents. Every sealer shall also have a reasonable compensation for all repairs, alterations, and adjustments which it is necessary for him to make.

Fees of sealers.  
Ibid. § 14.

16. The vibrating steelyards which have been heretofore allowed and used in this state, may continue to be used;

Vibrating steel-  
yards allowed  
to be used, if

sealed.  
G. S. 51, § 15.

*provided*, that each beam and the poises thereof shall be annually tried, proved, and sealed by a sealer of weights and measures, like other beams and weights.

Penalty for  
using unsealed  
weights, &c.  
Ibid. § 16.

17. Whoever sells by any other weights, measures, scales, beams, or balances than those which have been sealed as before provided, shall forfeit a sum not exceeding twenty dollars for each offence; and when by the custom of trade they are provided by the buyer, if he purchases by any other weights, measures, scales, beams, or balances, he shall be subject to a like penalty, to be recovered by an action of tort to the use of the complainant.

"Hundred  
weight" to be  
construed the  
net hundred.  
Ibid. § 17.

18. When commodities are sold by the hundred weight, it shall be understood to mean the net weight of all packages from one to one hundred pounds avoirdupois; and all contracts concerning goods sold by weight shall be understood and construed accordingly.

Rules for  
weighing.  
Penalty for vio-  
lation. Who to  
be deemed pub-  
lic weighers.  
Ibid. § 18.

19. Every public weigher of goods or commodities shall weigh the same according to the provisions of the preceding section, and make his certificate accordingly; and for each refusal or neglect he shall forfeit a sum not exceeding ten dollars. Every weigher of goods appointed by a city or town, and every weigher for hire or reward, shall be deemed and taken to be a public weigher within the provisions of this section.

Provisions re-  
specting meas-  
ures for salt  
and grain.  
Ibid. § 19.

20. In every city and town in which section twenty-three of chapter thirty of the Revised Statutes has been adopted according to the provisions thereof, or in which the provisions of this section shall be accepted by the city council of the city, or by the inhabitants of the town at a legal meeting, every measure by which salt or grain is sold, in addition to being conformable in capacity and diameter to the public standards, shall have a bar of iron across the middle thereof at the top, to be approved by a sealer of weights and measures, and a bar or standard of iron from the centre of the first-mentioned bar to the centre of the bottom of the measure, to be approved in like manner; and every such measure shall be filled by shovelling such salt or grain into the same, and the striking thereof shall always

be lengthwise of the first-described bar. And whoever sells or exposes to sale any salt or grain in any other measure, or fills or strikes such measure in any other manner than is provided in this section, shall forfeit fifty cents for every bushel of salt or grain so measured, filled, or stricken; *provided*, that salt may be measured from vessels in such measures as are used by the government of the United States, and that nothing contained in this section shall prevent the measuring of salt in tubs, or any proportional parts of hogsheads, without bars, as may be determined by any city or town.

21. By an act passed April twenty-three, eighteen hundred and sixty-three, new provisions relating to sealing weights and measures, are made as follows: The respective sealers of weights and measures in the several cities and towns are authorized and required to go to the houses, stores, and shops of all such persons within their respective cities and towns using weights and measures for the purpose of buying and selling, as shall neglect to bring in their weights, measures, milk-cans, balances, scales, and beams to be adjusted and sealed, and there at the said houses, stores, and shops, having entered the same with the assent of the occupant thereof, to adjust and seal the same, or send the same to his office to be adjusted and sealed, and shall be entitled to receive therefor the fees provided by law, together with all the expense of removing the same.

Sealers of weights, &c., required to go to stores, &c., and seal measures and balances.  
1863, 179, § 1.

22. If any such person shall refuse to have his measures, milk-cans, weights, balances, scales, or beams so tried, adjusted, and sealed, the same not having been tried, adjusted, and sealed within one year preceding such refusal, he shall forfeit ten dollars for each offence, one half to the use of the city or town, and one half to the use of the sealer of weights and measures.

Persons refusing to have measures, &c., sealed, liable to a penalty.  
Ibid. § 2.

23. If any person shall alter any weight, measure, milk-can, scale, balance, or beam after the same shall have been adjusted and sealed, so that the same thereby shall not conform to the public standard, and shall fraudulently make use of the same, he shall forfeit for each offence the sum of fifty dollars, one half to the use of the city or town, and one half to the use of the complainant. And any sealer when he shall have reason-

Persons altering measures, weights, &c., liable to a penalty.  
Ibid. § 3.

1863, 179, § 3.

able cause to believe that any weight, measure, milk-can, scale, balance, or beam has been altered since the same was last adjusted and sealed, is authorized and required to enter the premises in which any such weight, measure, milk-can, scale, balance, or beam is kept or used, and examine the same.

City Council  
may provide to  
pay sealer by  
salary.  
Ibid. § 4.

24. The city council of any city may by ordinance, and any town may by by-law, provide that the sealer of weights and measures for their respective city or town be paid by a salary, and that he account for, and pay into the treasury of the city or town, the fees received by him by virtue of his office.

Sealer may be  
removed.  
Ibid. § 5.

25. The mayor and aldermen of any city are authorized to remove the sealer of weights and measures at any time they may see fit.

Milk-cans to  
contain even  
quarts.  
Ibid. § 6.

26. No milk-can shall be sealed by any sealer which does not contain one or more quarts without any fractional part of a quart.

Act to be ac-  
cepted.  
Ibid. § 7.

27. This act shall not take effect in any city or town until it shall have been accepted by the city council of such city, or by the inhabitants of such town, at a legal meeting.<sup>1</sup>

Board of alder-  
men may ap-  
point weighers  
of boilers, &c.  
1863, 173, § 1.

28. An act passed April twenty-three, eighteen hundred and sixty-three, provides for the appointment of weighers of boilers and machinery, as follows: The mayor and aldermen or selectmen of any city or town where boilers and heavy machinery are sold, shall appoint one or more persons, not engaged in the manufacture or sale thereof, to be weighers of boilers and heavy machinery, who shall be sworn to the faithful discharge of their duties, and shall receive such fees as may be ordered by the board appointing them, which shall be paid by the seller, and shall be removable at the pleasure of the appointing power.<sup>2</sup>

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<sup>1</sup> Accepted by the city council, July 6, 1863.

<sup>2</sup> By a vote of the mayor and aldermen, passed June 24, 1863, weighers of boilers and other heavy machinery, are allowed to charge for their services under the act of April 23, 1863, a sum not exceeding fifty cents per ton.

ORDINANCE.<sup>1</sup>

SECTION 1. The mayor, by and with the consent of the board of aldermen, may annually in the month of March or April, appoint two sealers of weights and measures, who shall serve during one year, and until others are appointed and qualified in their stead, who shall have all the powers and perform all the duties, prescribed in the laws of the commonwealth relative to the sealers of weights and measures.

SECT. 2. Each sealer of weights and measures shall receive, in full compensation for his services, such salary as the city council may from time to time determine, and shall give bond with one or more sureties to the approbation of the board of aldermen, in the sum of three thousand dollars, with condition that he shall faithfully perform all the duties of his office.

SECT. 3. Each sealer of weights and measures shall keep a book, to be provided by the city, which shall be divided into eleven columns, with subdivisions, in the following form, viz : —

Date.	Name.	Place of business.	Kind of business.	No. of Scales, Weights, &c.			
				Weights and Measures.	Platform Balances.	Balances.	Scales, Beams.

Number and kind sealed.	Number and kind adjusted.	Number and kind repaired.	Amount charged.			Am't actually rec'd.	Remarks.
			Sealing.	Adjusting.	Repairing.		

<sup>1</sup> An ordinance relating to the sealing of weights and measures, passed July 6, 1863.

Records to be  
made.  
July 6, 1863.

And whenever he shall perform any duties by virtue of his office, he shall enter in said book, in the appropriate columns and subdivisions, all the particulars enumerated in said titles; and every such book shall be the property of the city of Boston, and shall be delivered by each sealer at the expiration of his term of office to the city treasurer.

Sealer shall col-  
lect and pay  
over fees quar-  
terly.  
Ibid.

SECT. 4. Each sealer shall collect, account for, and pay into the city treasury all the fees received by him by virtue of his office, and shall make a quarterly report, under oath, to the board of aldermen, of all moneys so received and paid over, and before receiving the quarterly instalments of his salary shall deliver to the treasurer a sworn certificate that he has discharged all the duties required of him by the statutes, and has in all respects complied with the provisions of this ordinance.

Sealer shall not  
be agent for  
selling scales,  
&c.  
Ibid.

SECT. 5. No sealer of weights and measures shall sell, be the agent for selling, or receive any commission on the sales of, scales, beams, balances, platform balances, weights or measures, or for recommending the same, or upon any part of the charge for adjustment or repairs.

City shall pro-  
vide office, &c.  
Ibid.

SECT. 6. The city shall provide and furnish suitable office accommodations for the sealers of weights and measures, and also transportation for their standards under direction of the committee on internal health.

Assistant al-  
lowed.  
Ibid.

SECT. 7. Whenever it shall be necessary for the proper discharge of his duty, any sealer may be allowed an assistant, to be nominated by such sealer and appointed by the board of aldermen, and such assistant shall be paid such compensation as the city council shall determine.

## WELLS AND PUMPS.

ORDINANCE OF THE CITY.<sup>1</sup>

- |   |   |
|---|---|
| 1. Public wells to be provided with pumps. Expense to be assessed on persons using the same.<br>2. Owner of estate assessed to pay within ten days. | 3. Owner of estate to be released in certain cases. Proviso.<br>4. Penalty for injuring, &c., public pumps. |
|---|---|

SECTION 1. It shall be the duty of the board of aldermen, to keep supplied with suitable pumps, all wells belonging to the city, and to keep the same in good order and repair; and to cause the expense of providing such pumps, as well as keeping them in repair, and also a reasonable charge for the use of the same, to be annually assessed upon the owners of real estate in the vicinity of such well, and whose tenants make use of the same; and where such owners are absent or out of this commonwealth, or unknown, then they shall assess his or their proportion of the same, upon the tenants of such real estate, said assessment to be charged on said estate.

SECT. 2. The owner or tenant of such real estate, as the case may be, being assessed as aforesaid, shall pay the amount thereof into the city treasury within ten days from the time of the delivery of such notice; and in case of neglect thereof for the space of ten days, it shall be the duty of the city treasurer to prosecute for the same.

SECT. 3. If the said owner or tenant, being assessed as aforesaid, shall make it appear to the satisfaction of the board of aldermen, that he has, upon his own estate, a good and sufficient well of water, and that neither he, nor any tenant or occupant of his estate, has made any use of, or has any necessity to resort to such public pump or well, in such case it shall be in the power of the board of aldermen to release such owner or

<sup>1</sup> An ordinance for the repair and keeping in order the public wells and pumps, passed December 30, 1833.

Proviso.  
Dec. 30, 1833.

tenant from the payment of such assessment; *provided, always*, that in such case if it shall be made satisfactorily afterwards to appear that any tenant or occupant of such estate hath made use of said public well or pump, such owner or tenant shall be liable to pay double the amount of that, and of all other assessments which may have been made upon such estate, if, from the circumstances of the case, the board of aldermen shall see fit to demand the same.

Penalty for in-  
juring, &c.,  
public pumps.  
Ibid.

SECT. 4. Whoever shall break or otherwise injure any of the public pumps, or commit any trespass on the same, shall forfeit and pay a sum not less than one dollar nor more than twenty dollars, to be recovered by complaint before the justices of the police court.

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## WITNESSES.

### STATUTE.

- |  |  |
|--|--|
| 1. Witness to attend and testify<br>before municipal authorities;<br>shall produce books and papers; | how summoned; fees; oath, by<br>whom administered.<br>2. If witness fails to attend, warrant<br>may issue to answer for con-<br>tempt. |
|--|--|

### STATUTES.

Witnesses to  
attend and tes-  
tify; bring  
books and  
papers.  
1863, 168, § 1.

1. Witnesses may be summoned, and compelled to attend, produce books and papers, and testify before any city council, or either branch of such council, or any joint committee thereof, or special committee of either branch thereof, or any board of selectmen, at any hearing before any such council, committee, or board, as to matters within their respective jurisdiction; and such witnesses shall be summoned in the same manner, paid the same fees, and be subject to the same penalties for default, as witnesses before police courts of this commonwealth. And the presiding officer of such city council or of either branch thereof, and any member of any such committee or board of selectmen, are hereby severally authorized to administer oaths to all such

Oath; fees.  
Ibid.

witnesses as shall appear before such council or either branch thereof, or any such committee or board respectively. 1863, 158, § 1.

2. In case any witness so summoned and paid shall fail to attend in pursuance of such summons, the presiding officer of such city council, or of either branch thereof, or the chairman of the board of selectmen, may issue a warrant to bring such witness before them to answer for the contempt, and also to testify as a witness in the cause in which he was summoned. If witness fails to attend, warrant may issue. Ibid. § 2.

## WOOD, BARK, AND COAL.

### STATUTES.

1. Dimensions of cord wood.
2. Penalty for selling wood, &c., not measured.
3. Fees to be fixed by mayor and aldermen.
4. Wood, &c., brought in by water, how measured. Cities, &c., may make ordinances, appoint surveyors, &c.
5. Carters to have tickets.
6. Cities may regulate inspection and sale of bark.
7. Anthracite, bituminous, or mineral coal to be sold by weight except, &c. 2000 pounds to be a ton.
8. Weighers, who are not sellers, to be appointed and sworn. Fees to be fixed by aldermen. Removal.
9. Seller to procure and deliver certificate of weight.
10. Penalty for violation of law.
11. Form and dimensions of charcoal measures.
12. Boxes, bins, cans, &c., of large dimensions.
13. Penalty for having, &c., illegal measures.

14. Seizers of illegal measures to be appointed; their duties.

### ORDINANCE.

1. Board of aldermen may assign places for measuring and sale of wood and bark brought by land.
2. Penalty for standing in places not assigned.
3. Measurers of wood and bark to be appointed by the mayor, &c. Tenure of office and powers and duties.
4. Fees to be established by aldermen.
5. Measurers of wood and bark brought by water to be appointed by the mayor; fees to be established by the aldermen. Powers and duties.

### RULES AND REGULATIONS.

1. Weighers, their fees.
2. Persons engaged in selling coal not to be appointed weighers.
3. Fees for measuring coal and bark brought to the city by land; when brought to the city by water.

## STATUTES.

Cord wood,  
dimensions of.  
G. S. 49, § 181.

1. Cord wood exposed for sale shall be either four, three, or two feet long, including half the kerf; and the wood, being well and close laid together, shall measure in quantity equal to a cord of eight feet in length, four in width, and four in height.

Penalty for sell-  
ing wood, &c.,  
not measured.  
Ibid. § 182.  
7 Cush. 371.

2. If any firewood or bark exposed to sale in a market, or upon a cart or other vehicle, is offered for sale before the same has been measured by a public measurer of wood and bark, and a ticket thereof signed by him delivered to the driver, certifying the quantity which the load contains, the name of the driver, and the place in which he resides, the driver and owner shall for each load thereof severally forfeit the sum of five dollars.

Fees.  
G. S. 49, § 183.

3. The measurers of wood and bark in any place shall be entitled to such fees for their services as the mayor and aldermen or selectmen shall establish; and the fees shall in each case be paid to the measurer by the driver, and shall be repaid by the purchaser.

Wood, brought  
by water, how  
measured.  
Towns may  
make regula-  
tions, &c.  
Ibid. § 184.

4. Cord wood brought by water into a place for sale and landed, shall be measured by a public measurer; and for that purpose the wood shall be corded and piled by itself in ranges, making up in height what shall be wanting in length, and being so measured, a ticket shall be given to the purchaser, who shall pay the stated fees for such service. But cities and towns may establish ordinances and regulations with suitable penalties, for the inspection, survey, admeasurement, and sale of wood, coal, and bark for fuel, brought into such places for sale, and may also provide for the appointment of such surveyors, inspectors, and other officers, and establish their fees of office.

Carters to have  
tickets.  
Ibid. § 185.

5. Each wharfinger, carter, or driver, who conveys any firewood or bark from a wharf or landing-place, shall be furnished by the owner or seller with a ticket certifying the quantity which the load contains and the name of the driver; and if firewood or bark is thus conveyed without such ticket accompanying the same, or if a driver refuses to produce and show such ticket on demand to any sworn measurer, or to give his consent to have the same measured, or if such ticket certifies

a greater quantity of wood or bark than the load contains, in the opinion of the measurer after measuring the same, the driver and owner shall for each load thereof forfeit the sum of five dollars. But nothing contained in this chapter shall be construed to extend to a person who transports, carts, or causes to be transported or carted, from a wharf or landing-place to his own dwelling-house or store, cord wood or bark which he has purchased on a wharf or landing-place, or has landed thereon upon his own account.

G. S. 49, § 185.  
Proviso.  
Ibid.

6. The city council of a city may establish ordinances and regulations, with suitable penalties, for the inspection, survey, admeasurement, and sale of bark for fuel or manufacturing purposes brought into said city for sale, whether the same is exposed for sale in ranges or upon a cart or other vehicle; and said city may provide for the appointment of such surveyors, inspectors, and other officers, as may be necessary to carry into effect said ordinances, and may establish their fees; *provided*, that no penalty for any one violation shall exceed the sum of five dollars.

Cities may regulate inspection and sale of bark.  
Ibid. § 186.

7. Anthracite, bituminous, or mineral coal when sold in quantities of five hundred pounds or more, except by the cargo, shall be sold by weight, and two thousand pounds avoirdupois shall be the standard for the ton by which the same shall be weighed and sold.

Anthracite, bituminous, or mineral coal to be sold by weight except, &c.; 2000 pounds to be a ton.  
Ibid. § 187.

8. The mayor and aldermen or selectmen of every place where such coal is sold shall appoint one or more persons not engaged in the business of selling coal to be weighers of such coal, who shall be sworn, and be removable at the pleasure of the board appointing them, and shall receive such fees as may be ordered by the board, which shall be paid by the seller.

Weighers, who are not sellers, to be appointed and sworn.  
Ibid. § 188.  
Removal.  
Fees.

9. On or before the delivery of such coal the seller shall cause the same to be weighed by a sworn weigher of the place in which the same is sold or delivered, and a certificate of the weight thereof, signed by the weigher, shall be delivered to the buyer or his agent at the time of the delivery of the coal.

Seller to procure and deliver certificate of weight.  
Ibid. § 189.

10. Whoever violates any provision of the three preceding sections shall for each offence forfeit thirty dollars.

Penalty.  
Ibid. § 190.

Form and dimensions of charcoal measures.  
G. S. 49, § 191.

11. In the sale of charcoal, the baskets, tubs, or vessels used in measuring the same, except as hereinafter provided, shall be of a cylindrical form, and of the following dimensions in the inside thereof, to wit: nineteen inches in diameter in every part, and eighteen inches and one tenth of an inch in depth, measured from the highest part of the bottom thereof; each of which shall be deemed to be of the capacity of two bushels, and shall be filled level full; and every such vessel shall be sealed by a sealer of the place in which the person using the same shall usually reside or do business.

Dimensions of charcoal boxes, bins, or cans.  
Ibid. § 192.

12. Charcoal may be measured in boxes, bins, or cans, of the following capacities, to wit: of five, ten, twenty, thirty, forty, or fifty bushels, such boxes, bins, or cans being first lawfully sealed as aforesaid; and five thousand one hundred and thirty-two cubic inches shall be deemed equal to two bushels, or the level basket, tub, or vessel, described in the preceding section.

Penalty for having, &c., illegal measures.  
Ibid. § 193.

13. Every vendor of charcoal, who has in his possession any basket, tub, box, bin, vessel, or measure of less dimensions than those required by the two preceding sections, or not sealed as therein provided, with intent to use the same or permit the same to be used for measuring charcoal, sold or agreed to be sold, shall forfeit ten dollars for every such measure in his possession. And every person who measures in any such basket, vessel, or measure any charcoal sold or offered for sale, unless by special agreement of the buyer and seller, shall forfeit a sum not exceeding one dollar for every two bushels so measured or pretended to be measured, and such basket, vessel, or measure shall be destroyed.

Persons to be appointed to seize illegal measures, &c., and arrest without warrant, &c.  
Ibid. § 194.

14. The mayor and aldermen or selectmen of every place shall appoint one or more suitable persons to seize all baskets, vessels, or measures used or intended to be used for measuring charcoal, and not conforming to the foregoing provisions; and to arrest without warrant any person having in his possession such baskets, vessels, or measures, and take him and them before the proper tribunal for prosecution; and upon his being convicted or found guilty, such tribunal shall order said baskets, vessels, and measures to be destroyed.

ORDINANCE.<sup>1</sup>

SECTION 1. The board of aldermen may assign as many places for the measuring of wood and bark, brought into the city by land for sale, as they may deem expedient; and they may assign places for the sale of such wood and bark.

Aldermen to assign places for measuring and sale of wood and bark.  
Oct. 31, 1850.

SECT. 2. Any person bringing wood and bark as aforesaid, into the city for sale, who shall, before or after the same has been duly measured, stand for the sale thereof in any other street or place than those appointed by the board of aldermen, shall forfeit and pay the sum of not less than two nor more than fifty dollars for each offence.

Penalty for standing in places not assigned, &c.  
Ibid.

SECT. 3. The mayor by and with the advice and consent of the aldermen, may annually appoint as many measurers of such wood and bark as they may deem expedient, who shall serve during the year, and until others are chosen and qualified in their stead, and who shall have all the powers and perform all the duties of measurers of such wood and bark, mentioned in the laws of the commonwealth.

Measurers of wood and bark brought by land to be appointed by the mayor; tenure of office  
Ibid.

SECT. 4. Measurers of wood and bark shall be entitled to such fees for their services as the board of aldermen shall establish, to be paid according to law.

Fees established by aldermen.  
Ibid.

SECT. 5. The mayor, by and with the advice and consent of the aldermen, may annually appoint four or more measurers of wood and bark brought by water into the city for sale and landed, who shall serve during the year, and until others are appointed and qualified in their stead, and who shall be entitled to such fees as the board of aldermen shall establish, to be paid by the purchaser; and such measurers shall have all the powers and perform all the duties of measurers of wood and bark brought into the city by water for sale, mentioned in the laws of the commonwealth.

Measurers of wood and bark brought by water, appointed by the mayor, &c.  
Ibid.

<sup>1</sup> An ordinance relating to the measuring of wood and bark, passed October 31, 1850.

RULES AND REGULATIONS IN RELATION TO WEIGHING OF  
COAL AND MEASURING OF WOOD AND BARK.

Fees of weigh-  
ers of coal; sub-  
stance of weigh-  
er's certificate.  
July 6, 1863.

SECTION 1. The weighers of coal appointed under chapter forty-nine of the General Statutes shall be entitled to receive the sum of five cents for each and every ton, or fraction of a ton, (not less than five hundred pounds,) of coal weighed by them, which shall be in full for all their services, including the certificate of the weight thereof—which fee shall be paid by the seller. Said certificate shall contain the gross weight, the tare, and the number of the cart in which the same was weighed.

Coal dealers not  
to be weighers.  
Ibid.

SECT. 2. No person engaged in the business of selling coal shall act as a weigher.

Fees of meas-  
urers of wood  
and bark.  
Oct. 13, 1863.

SECT. 3. The fees for the measurement of wood and bark, brought by land or water, shall be as follows:—

When brought by land, at the rate of eight cents per cord.

When brought by water, at the rate of five cents per cord.

## REVISED ORDINANCES.

### ORDINANCE.

*Be it ordained by the Aldermen and Common Council of the City of Boston, in City Council assembled, as follows :*

SECTION 1. All the ordinances printed and contained on the preceding pages of this book, having been, under the direction of the joint committee on ordinances of the city council of the city of Boston, codified and revised by George P. Sanger and John G. Locke, and printed under their direction and supervision, are hereby declared to be the ordinances of said city of Boston, and shall have the force thereof.

Adoption of  
Revised  
Ordinances.  
Dec. 4, 1863.

SECT. 2. All other ordinances and parts of ordinances heretofore passed by the city council of said city are hereby repealed.

Repeal of former Ordinances.  
Ibid.

SECT. 3. The repeal in the preceding section shall not affect any act done, or any right accruing or accrued, or established, or any suit or proceeding had or commenced in any civil case before the time when such repeal shall take effect, nor any offence committed, nor any penalty or forfeiture incurred, nor any suit or prosecution pending at the time of such repeal, for any offence committed, or for the recovery of any penalty or forfeiture incurred, under any of the provisions so repealed ; and in all cases where any provisions of the preceding ordinances are made to go into operation at any time hereafter, the corresponding provisions, if any, of the said repealed ordinances or orders shall continue in force until the said new provisions shall go into operation, subject, however, to any express regulations relating thereto which may be contained in the preceding ordinances ; and all persons who, at the time when the said repeal shall take effect, shall hold any office under any of the

Repeal not to affect rights accrued, &c.  
Ibid.

Former Ordinances, &c., not to be revived.  
Dec. 4, 1863.

ordinances or orders so repealed, shall continue to hold the same according to the tenure thereof, except those offices which may have been abolished, and those as to which a different provision shall have been made by the preceding ordinances; and no ordinance or order, or part of an ordinance or order, which has been heretofore repealed, shall be revived by the repeal, in the preceding section, of any of the ordinances or orders, or parts of ordinances or orders therein mentioned.

*In Board of Aldermen, November 30, 1863.*

Passed; sent down for concurrence.

THOMAS C. AMORY, Jr., *Chairman*.

*In Common Council, December 3, 1863.*

Concurred.

GEORGE S. HALE, *President*.

Approved, December 4, 1863.

FREDERIC W. LINCOLN, JR., *Mayor*.

## RULES AND REGULATIONS.

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### ORDER.

#### ORDERED :

SECTION 1. That all the rules and regulations of the board of aldermen of the city of Boston, printed and contained in the book described in the first section of the preceding ordinance entitled the “Revised Ordinances,” be and they are hereby declared to be the rules and regulations of the board of aldermen of said city of Boston, and shall have the force thereof.

Adoption of  
Rules and reg-  
ulations, &c.  
Dec. 7, 1863.

SECT. 2. All other rules and regulations, and all orders and parts of all rules and regulations and orders heretofore passed by the board of aldermen inconsistent with the rules and regulations described in the preceding section, shall be, and the same are hereby repealed.

Former Rules  
and regulations,  
&c., repealed.  
Ibid.

SECT. 3. The repeal of the rules and regulations and orders, and parts of rules and regulations and orders, as provided for in the next preceding section, shall be subject to all the conditions, limitations, and restrictions, so far as they are applicable, described and set forth in the third section of the ordinance, entitled the “Revised Ordinances,” mentioned in the first section of this order.

Repeal of for-  
mer regula-  
tions, &c.,  
limited.  
Ibid.

*In Board of Aldermen, December 7, 1863.*

Passed.

Attest :

SAMUEL F. McCLEARY, *City Clerk.*

## A D D E N D A .

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### SUFFOLK RAILROAD.

#### *Ninth Location.*

Ninth location.  
Nov. 4, 1863.

9. In addition to the rights heretofore granted to the Suffolk Railroad Company to lay down tracks through the streets of the city of Boston, the said company shall have the further right to lay down a track from their switch, near the foot of Tremont Street, to the track of the Middlesex Railroad, on the westerly side of Scollay's Building, and thence to run their cars for a short distance on the track of the Middlesex Railroad to a point near the northerly end of said building, and thence to construct a track from near the northerly end of said building, along the easterly side of said Middlesex track, to the present track of the Suffolk Railroad in Court Street, northerly of said Scollay's Building.

This location is under the express proviso and condition that the location of the curved track of rail of Suffolk Railroad Company, from their switch, near the foot of Tremont Street, through the open space lying southerly of Scollay's Building, to the track of the Suffolk Railroad, lying on the easterly side of said building, is hereby discontinued, and said Suffolk Railroad Company shall, at their own expense, take up said curved track between said points after the completion of the track under this location, and shall repave where the tracks shall have been so taken up in a manner satisfactory to the committee on paving and superintendent of streets.

Also, under the further express proviso and condition, that the Suffolk Railroad Company shall accept this order of loca-

tion, and agree to its several provisions and conditions within Ninth location.  
Nov. 4, 1863. ten days from the date of its passage, and shall file the same with the city clerk, otherwise it shall be null and void.<sup>1</sup>

Also, under the further express proviso and condition, that the whole work of laying down the tracks granted under authority of this order of location, shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and that the form of rail to be used shall be approved by them.

Also, under the further express proviso and condition, that the board of aldermen reserve the right to allow any other horse railroad company to run cars over the tracks located by authority of this order, for such compensation to be paid to the said Suffolk Railroad Company as may be mutually agreed upon; or in case of disagreement, the compensation to be thus paid shall be determined according to law.

Also, under the further express proviso and condition, that inasmuch as the Metropolitan, Middlesex, and Suffolk Railroad Companies have respectively agreed in writing, by the signatures of the presidents of the respective companies affixed to a plan of tracks to be carried into effect by this order of location, nothing in this order of location of tracks shall be construed to impair the obligations which said corporations have each entered into with the city of Boston, for keeping in good order and complete repair and repaving the streets in which their tracks are located around "Scollay's Building," so called.

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MIDDLESEX RAILROAD.

*Fifth Location.*

5. In addition to the rights heretofore granted to the Middlesex Railroad Company to lay down tracks in several of the streets of the city of Boston, the said company are authorized to Fifth location.  
Dec. 16, 1863.

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<sup>1</sup> Accepted by Suffolk Railroad Company, November 5, 1863.

Fifth location.  
Dec. 16, 1863.  
See *ante*, p. 585.

construct and maintain a curved track from the track of the said company in Beverly Street, across Beverly and Causeway Streets to the track of the Suffolk Railroad Company in Causeway Street, in front of the Boston and Fitchburg Railroad depot building.

The right to lay down this curved track is under the express proviso and condition that the location granted to said Middlesex Railroad Company, October twenty-nine, eighteen hundred and sixty-two, to construct a single track in Merrimac Street, be and the same hereby is rescinded.

Also, under the further express proviso and condition, that said Middlesex Railroad Company shall at all times after the curved track is laid down, keep in good order and complete repair the easterly half of the roadway or cartway of Beverly Street, between Causeway Street and the Warren Bridge, at their own expense, and to the satisfaction of the superintendent of streets; and whenever the board of aldermen shall from time to time determine, and order that said portion of Beverly Street through and in which the tracks of said Middlesex Railroad Company are located, shall be repaved with what they shall deem to be the best of stone material, the whole expense of such paving shall be paid by the said Middlesex Railroad Company, the work to be done by the superintendent of streets, under the authority of the board of aldermen.

Also, under the further express proviso and condition, that the whole work of laying down the curved track granted under the authority of this order of location shall be done under the direction and to the satisfaction of the committee on paving and the superintendent of streets, and that the form of rail shall be satisfactory to the committee on paving and the superintendent of streets, and shall be approved by them.

Also, under the further express proviso and condition, that the board of aldermen reserve the right to allow any other horse railroad company to run cars over the curved track located by the authority of this order for such compensation for the use of said track as may be agreed upon by the respective companies; and in case of disagreement the compensation to be thus paid shall be determined according to law.

Also, under the further express proviso and condition, that the said Middlesex Railroad Company shall accept this said order of location and agree to comply with its several provisions and conditions in writing within twenty days of the date of its passage, and file said acceptance and agreement with the city clerk, otherwise it shall be null and void.<sup>1</sup>

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<sup>1</sup> Accepted by Middlesex Railroad Company, December 26, 1863.



# INDEX.

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- ABATEMENT, of taxes, provisions concerning, 734, 735, 749, 766.  
no abatement to be made unless, &c., 735.  
person claiming must produce certificate, 749. See *Taxes*.
- ABSENTEES from school, provisions respecting, 769, 771, 646. See *Truants*.
- ACCOUNTABILITY of officers and boards to city council, 21. See *Finance*.
- ACCOUNTS, auditor of, 195–201. See *Auditor*.  
board of, 37. See *Board of Accounts*.  
*joint committee of*, 196. See *Finance*.  
to meet once a month, 196.  
to approve payments, 197.  
direction of, necessary for payment of sums exceeding \$300, 197.  
to direct manner of keeping auditor's books, &c., 197.  
to pass bills and accounts against the city, 197.  
to approve bills for expenditures by water board, 796.  
of auditor, how kept, &c., 197.  
of treasurer, to be made up to thirtieth of April, 198.  
to be audited by joint committee, 201.
- ACTIONS, by and against city, where brought, and how removed, 30.  
civil, to recover forfeitures when brought, 30..  
by the city, to be prosecuted by city solicitor, 665.  
against the city to be defended by him, 665.  
See *Ordinances* and *By-Laws*.
- ADJOURNMENTS of ward meetings for election of ward officers, 5.  
for election of common council, 9, 10.  
of certain authorized meetings in ward rooms, provisions concern-  
ing, 777. See *Ward Rooms*.

ADJUTANT GENERAL, to furnish certain blank books to city, 676.

See *State Aid*.

ADULTERATED food or liquors not to be sold, 305, 306.

medicines not to be sold, 305, 306.

penalties for adulteration and sale, 305, 306.

milk not to be sold, 410; penalty, 410.

ADVERTISEMENT of lands to be sold for taxes, how made, and to state what, 753.

AFFIDAVIT of collector of taxes, &c., to be evidence of demand, 753.

of posting, &c., notices of sales of real estate to be evidence, 753.

ALARMS, of fire, how given, 226. See *Fire Alarm Telegraph*.

ALDERMEN, board of, to consist of twelve persons, 3.

election of, 8, 9, 11; to be inhabitants of the city, 3.

when and how to be sworn and organized, 12.

death or resignation, 11; vacancy in, 11.

to choose a permanent chairman, 13.

to compose with common council, the city council, 3.

to appoint time of ward meetings, 4.

to examine returns of votes for mayor, 7.

to cause notice to be given to mayor elect of his election, 7.

to issue warrants for new election, in case of no choice, &c., 7.

duty of, in case of no choice of mayor before commencement of municipal year, 7, 8.

to issue warrant for election of mayor, in case of decease, &c., of that officer, 21.

to organize, when no mayor is elected, 7.

to elect a chairman in such case, 7.

to issue warrants for choice of mayor, 7, 21.

duty in case of refusal of mayor elect to accept, 7.

in case a mayor, or a full board of aldermen is not chosen, 8.

chairman and board of aldermen, to discharge duties of mayor and aldermen, in case of non-election or absence of mayor, 8, 13.

to be surveyors of highways, 17.

their general powers and duties, 14, 15, 16.

to have administration of police, 14; and executive powers, 14.

powers and duties of selectmen vested in, 14.

to have powers and duties of county commissioners, 14.

with common council to elect city clerk and treasurer in convention, 13, 17, 18.

ALDERMEN, board of, (*Continued.*)

appointments made by mayor by and with the advice and consent of, 20, 21 ; removal, 21.

members not eligible to salaried office, 18.

shall hold no office of emolument under city government, 18.

to count, &c., votes for state and national officers, 25.

to seal up separate lists of votes for state officers, 25.

duties in relation to votes for election of president of U. S., 26.

to make voting lists, 24, 151 ; to deliver same to clerk of ward, 24.

to warn general meetings of citizens, 27, 153.

to issue all warrants for meetings, 27, 153.

may authorize recognizances on behalf of the city, 14, 31.

may license exhibitions, shows, &c., 14, 15, 32.

may revoke or suspend such license, 32.

to provide armories for the militia of the city, 33, 34.

may license, &c., auctioneers, 35, 36.

to appoint weighers of vessels, 20, 38, 40, 41.

may license, &c., billiard tables and bowling alleys, 62.

authority in regard to the various bridges, 67-88. See *Bridges*,

*Streets*.

may abate, as a nuisance, wooden buildings erected contrary to law, 91.

notice of intention to build, to be given to, 92.

may cause numbers to be affixed to buildings, 92.

penalty for not complying with their direction, 92.

may cause cellar doors and platforms to be repaired, 93.

may license sale, &c., of camphene and burning fluids, 94.

may make regulations respecting carriages, 97.

may annex penalties thereto, 97 ; to publish the same, 97.

may demand one dollar for license, 97.

rules and orders of, respecting carriages, 97-109.

such rules to apply to horses harnessed to carriages, 716, *note*.

will grant and revoke licenses for same, 98.

to direct how carriages shall be placed in squares, &c., 100.

to have defective chimneys examined and repaired, 112.

order to be served on owner of such chimney, 112.

may abate defective chimney as a nuisance, 112.

may license chimney sweepers, 113 ; to fix rates for sweeping, 113.

to cause foul chimneys to be examined, 113.

to give notice thereof to owners or occupants, 113, 114.

ALDERMEN, board of (*Continued.*)

- may set out, &c., shade trees at public expense, on, &c., 119.
- to have care and custody of common, squares, and fountains, 120, 122.
- to approve appointment of constables, 20, 122.
- constables' bonds to be on what conditions, 122.
- to consent to removal of constables, 124.
- not to be interested in contracts, &c., with the city, 126.
- to have certain powers of county commissioners, 130, 133.
- to determine bond of register of deeds and of county treasurer, 132, 133.
- to grant licenses to common criers, 142.
- to assent to discharge, &c., of mortgages, 144.
- shall require unlicensed dogs to be killed, 147.
- to designate land to be set apart at East Boston for public purposes, 149.
- duty of in regard to voting lists, and placing names thereon, 151.
- to issue warrants for ward meetings, and general meetings of citizens, 160, 161.
- warrants for general meetings to be returned to, 161.
- to fix time for opening and closing the poll, 153, 161.
- to approve appointment of superintendent of Faneuil Hall, 20, 163,
- authorized to extend Faneuil Hall Market, 166.
- same extended by, 167, *note*.
- to enforce the laws against the unseasonable killing of certain birds, 168.
- to approve appointment of superintendent of market, 20, 168.
- to authorize appointment of deputies of said superintendent, 169.
- general powers and duties of, in relation to market, 169-175.
- power to establish public ferries, 183.
- to determine rates of toll for the ferries, 185, 187.
- to appoint enginemen, hosemen, and hook-and-ladder men, 20, 204, 218, 219. See *Engineers, Fire Department*.
- may license bonfires, brickkilns, &c., 227, 720.
- to have care of, &c., Rainsford Island, 242.
- gravel, &c., not to be taken from Bird Island, without license of, 243.
- authority to appoint harbor master, 276.
- to approve harbor master's bond, 273.
- may restrain sale by minors of fruit, books, newspapers, &c., 278.

ALDERMEN, board of, (*Continued.*)

- to appoint superintendents of hay scales and weighers of hay, 20, 282, 285.
- to appoint inspectors of bale or bundle hay, 20, 288.
- to appoint stands for sale of hay and straw, 284.
- to establish public scales, 285.
- shall require and enforce vaccination, 295.
- to assign places for offensive trades, 299.
- dead bodies not to be dug up, &c., without authority from, &c., 302.
- to make regulations concerning burial-grounds, &c., 302.
- to constitute board of health, 19, 290, 306.
- to exercise powers and duties of board of health, 306.
- vaults may be connected with common sewers by direction of, 316.
- to cause privies, drains, &c., to be constructed, where not done, 317.
- regulations as to cleansing vaults, &c., 318.
- to determine prices for same, 318.
- to remove occupants of tenements, when too numerous, unprovided with vaults, &c., 319.
- house offal not to be removed without license of, 319, 320.
- dirt, &c., not to be thrown into streets, &c., without license of, 320.
- to be removed by order of, 321.
- fish, &c., not to be sold in certain places, without license, of, 321, 322.
- swine, or goats, not to be kept without license of, 322.
- may call upon city physician for services, 313, 314.
- port physician for services, 315, 316.
- interment of the dead to be subject to control of, 309, 310, 313.
- to appoint undertakers, 310; their powers and duties, 311.
- to make regulations respecting interment of the dead, 313.
- two to be chosen trustees of city hospital, 325.
- to determine allowance for support of lunatics, 330.
- may discharge lunatics from hospital, 332.
- to provide house of correction, 340, 341.
- may order money to be advanced for tools and materials in same, 356.
- directions of, for specific rations to prisoners, to be obeyed, 357.
- one to be director for public institutions, 370.
- may grant licenses for intelligence offices, and revoke the same, 382, 383.
- duties of in regard to jury lists and drawing jurors, 388.

ALDERMEN, board of, (*Continued.*)

- to set up lamps, and make rules respecting same, 390, 391.
- deputy inspectors of sole leather to be appointed on application of, 392.
- to approve appointment of measurers of upper leather, 20, 392.
- one to be chosen trustee of public library, 396.
- may license innholders and victuallers, 398,
- to make regulations respecting the survey &c., of marble, soap-stone, and freestone, 404.
- may appoint surveyors of marble, &c., 405.
- to appoint measurers of grain, 406; inspector of milk, 409.
- one to be chosen trustee of Mt. Hope Cemetery, 413.
- to abate nuisance of burnt and dangerous buildings, 419.
  - of booths used for gaming, &c., 420.
- duty in regard to appointments to office, 421.
- to furnish rooms for public officers, 422.
- to have the direction and custody of public records, 423.
- cannot suspend a by-law, 424, *note*.
- may license pawnbrokers, &c., 460, 461.
- may order a watch to be kept, 463, 466.
- duties of in establishing a watch, 463, 468.
- power in regard to the police, 465, 466, 468-471.
- may make rules and regulations for police department, 471.
- to appoint porters, establish their compensation, &c., 472.
- to provide court houses, jails, and other county buildings, 475.
- one to be member of board of land commissioners, 480.
- to have powers of county commissioners, as to railroad damages, 487.
- either party may appeal from decision of, 487.
- may apply for raising or lowering of highway, &c., crossing railroad, 490; for flagmen at crossings, 495.
- may request that gates be erected at crossings, 494, 495.
- regulations of as to horse railroads, 498, 502-504, 505-620, 831, 832.
- may offer rewards for securing offenders, 625.
- such rewards not to exceed \$ 500, 626.
  - may determine between different claimants, 626.
- duty of in case of riots, 626-630.
- when to elect new board of school committee, 635.
- when may take land for schoolhouses, 638, 639.
- may license dealers in junk and second-hand articles, 651.

ALDERMEN, board of, (*Continued.*)

- may lay, maintain, &c., main drains and common sewers, 654.
- to assess the expense of same, 655, 656, 660.
  - such assessment may be appealed from, 655, 656.
- to give directions as to common sewers, 658.
- superintendent of common sewers to act under the direction of, 658.
- to deduct one quarter of expense of common sewers, 659.
- to assess the remainder, 659.
- to make assessments for common sewers heretofore constructed, 660.
- may cause owners of land to make drains, 660.
- to make drains at expense of owner, in case, &c., 660.
- rain water may be carried into common sewers, under direction of, 660.
- to give permits for entering drain into common sewers, 660.
- duty of in application of state aid to volunteers, 667, 677.
- may make order restraining steam engines and furnaces, 682.
- may abate and remove engine or furnace, erected contrary to law, 683.
- proceedings on application for license for steam engine, &c., 680.
- party aggrieved by their order may apply for a jury, 681.
- may examine steam engines, 682.
- to lay out and widen streets, 687; to discontinue any street, &c., 688.
- to keep a record of streets, &c., 689.
- to have and perform powers and duties of county commissioners, as
  - to laying out, altering, and discontinuing ways, 180, 689, 690.
  - decisions respecting such powers, 689, 690, *notes*.
- powers as to grading streets laid out over private land, 697.
- no street less than thirty feet wide to be opened, without consent of, 698.
- to close up entrances to ways dedicated to the public use and not accepted, 697.
- may construct sidewalks at expense of abutters, in case, &c., 697, 698.
- to regulate raising or lowering articles on outside of any building, 702.
- shall be surveyors of highways, 17, 703.
- to give consent to open ground in streets, for gas pipes, 703.
- authorized to lay out streets in continuation of Broad and Commercial streets, 704.
  - of Front Street, 705; of Clinton street, 705; of Charles Street, 705.

ALDERMEN, board of, (*Continued.*)

- streets to retain their names, until altered by, 707.
- to approve assistant of superintendent of streets, 707.
- superintendent to act under direction of, 708.
- streets not to be dug up without license of, 709.
  - if dug up to be repaired to satisfaction of, 709.
- notice of intention to build, to be given to, 710.
- street dirt not to be taken without license of, 711.
- buildings not to be moved in street without license of, 711.
- may make order respecting awnings and shades, 712.
- may order projecting signs, &c., removed, 712.
- bells to give notice of business, not to be rung without, &c., 712.
- standing in streets to grind cutlery, not permitted without, &c., 713.
- apertures under streets, coal holes, &c., to be regulated by, 713–715, 722.
- gratings in streets to be regulated by, 713, 715.
- streets not to be watered without license of, 716.
- power, &c., as to abatement of taxes, 735, 766.
- may appoint persons to make complaints respecting truants, 20, 769, 770.
- to grant wardrooms for certain uses, 777.
- one to be member of Cochituate Water Board, 794.
- powers of, as to appointment and removal of sealers of weights and measures, 809, 816, 817; and assistant sealer, 818.
- appointment of measurers of coal, wood, and bark, 20, 823, 825.
- may apply to have idle children sent to the house of reformation, 377.

ALIEN PASSENGERS, law concerning, 31. See *Paupers*.

ALLEYS, 320, 693, 700, 716. See *Health, Streets*.

ALMSHOUSE, none to be erected or maintained in other place without consent, 340. See *House of Industry. Paupers*.

AMUSEMENTS, licenses and regulations for, 32, 33.

- penalty for exhibiting without license, 32.
  - for setting up theatrical exhibition where lager beer, &c., is exposed for sale, 32.
  - for getting up, &c., masked balls, 32, 33.
  - for exhibiting the fighting of animals, 33.
  - not permitted on the common, public squares, &c., 121.

ANIMALS, certain, not to be fed in street, 716,

- not to be driven faster than six miles an hour, 716.
- not to go at large in streets, 716; fighting of, 33.

- ANTHRACITE COAL, how to be sold, 823. See *Coal and Wood*.
- APERTURES under streets, regulated, 714, 715, 720-723.
- APPEAL, allowed in proceedings on seizure of loaded fire-arms, 230, 231.  
on seizure of gunpowder, 236,  
from sentences to house of reformation, 379.  
in cases of railroad damages, 487.  
in cases of common sewers, 655.  
in laying out streets, &c., 687-692.  
in applications for steam engines and furnaces, 681.
- APPRENTICES, poor children may be bound by overseers of the poor, 453, 454.  
in Boston, by directors of house of industry, &c., 373.  
until what age and upon what terms, 454.  
consideration to be for the use of such apprentices, 454.  
who shall inquire into treatment of, 454.  
complaint may be filed in the superior court, 455.  
court may discharge apprentice, 455; may award costs for master, 455.  
master liable to action on indenture, 455.  
by whom action may be brought, 455; proceedings therein, 456.  
limitation of action, 456; costs, 456.  
absconding apprentice may be arrested and returned or imprisoned, 456.  
master may file complaint, 456.  
may be discharged from contract, 455.  
death of master, 457.  
minor may be bound to mistress, 457.  
common-law rights of father not affected, 457.  
directors of house of reformation may bind out children, 378.
- APPROPRIATIONS, when expenditures exceed, auditor to apprise city council, 197.  
auditor to make estimate of, 200.
- AQUEDUCT, when repaired in streets, a fence and lights to be put up, 709; from Long Pond to Boston, 781. See *Water*.
- AQUEDUCT CORPORATION, property of, may be purchased by the city, 790.  
acts respecting, 790, *note*.
- ARDENT SPIRITS. See *Liquors*.

## ARMORIES.

- board of aldermen to provide for the militia, 33.
- location how determined, 33, 34.
- amount of rent of, how certified and allowed, 34.
- penalty for false certificate, 34.
- may be examined by State authorities, 34.
- city council may raise and appropriate money therefor, 766.

ARSENAL, may be released to Boston, 243.

ASSESSMENT of taxes, 725-746. See *Taxes*.

ASSESSMENTS for common sewers, 655 659. See *Sewers*.

ASSESSORS, may be chosen by city council, or election provided for, 16, 764.

- to ascertain the number of persons between five and fifteen and report to school committee, 640.
  - to make oath to valuation lists, 733.
  - may assess, &c., seven days prior to any election, 735.
  - to assist in preparation of voting lists, 24.
  - board of aldermen to have access to books of, 24.
  - office hours of, 422, 423; how chosen, &c., 764, 767.
  - their duties and compensation, 764, 768.
  - committee to nominate, 764
  - may be removed, 765; vacancies, how filled, 765.
  - organization of, 765; secretary to keep records, 765.
  - committee on assessors' department, 765, 766.
  - chairman, or other assessor, to remain at assessors' room, 766.
  - abatements to be recorded, 766; to make out tax bills, 766.
  - to deliver the same to the treasurer, 766.
  - may transfer taxes on real estate to the owner, 767.
  - to assess real estate to the owner, 767; proviso, 767.
  - to assess to the commonwealth when in possession under mortgage, 726.
  - to assess property of minors where the minor lives, 728, 729.
  - not to abate taxes unless a sworn list is filed, 735.
  - to assess property at its cash value, 731.
  - corporations to make returns to, 740.
  - not to assess certain property of widows, 726.
- ASSISTANT ASSESSORS, how chosen, &c., 765; pay, 765.
- organization of, 765; duties of 766. See *Taxes*.
- ASSISTANT DISTRICT ATTORNEY, 131.

- ASSISTANT SEALER of weights and measures may be appointed, 818.
- AUCTION, certain goods placed on sidewalk to be sold at, 718.
- AUCTIONEERS, provisions concerning licenses and bonds of, and sales by, 35, 36.
- AUDITOR, appointment of, 196 ; office hours of, 422, 423.  
tenure of office, compensation, oath, bond, 46, 48, 196.  
vacancy in office, how filled, 196.  
to examine claims on which payments are made, 197.  
to countersign drafts for money, 197.  
    but not without direction of committee, for sums exceeding \$ 300, 197.  
manner of keeping books, 197.  
to certify bills and accounts against the city, 197.  
to make certain communications to city council, 197.  
to receive, examine, cast, file, and enter bills and accounts, 197.  
to exhibit to committee in case of doubt, 197.  
to render other services, 197.  
to conform to orders of committee on city debt, 198.  
to pass certain moneys to credit of said committee, 199.  
to place debts in hands of solicitor for suit, 199.  
to pay over moneys to city treasurer, 199.  
to lay before city council, annually, statement of moneys received, 200.  
    schedules of leases, 200.  
    estimates of money to be raised and statement of receipts and expenditures, 200.  
account with the treasurer, 200.  
not to pass bills for ballast unless accompanied by certificate, 46.  
to have custody of bonds of city officers, 48.  
may require oath of claimant under contract, in certain cases, 125.  
not to pass certain bills, 126.  
to audit coroner's accounts, 133.  
scrip purchased for city hospital to be deposited with, 328.  
to sign water scrip, 787.  
mayor, treasurer, and auditor, to be trustees of water fund, 788.  
to examine bills for expenditures by water board, 796.
- AUDITORS of accounts of overseers of poor, 433.
- AWNINGS and shades, regulated, 712.

- BACK BAY, commissioners on the, to fill up certain lands, 119.  
provisions concerning the streets and drainage in, 705, 706.
- BALANCES. See *Weights and Measures*.
- BALCONY, not to project into streets, more than, &c., 700, 713.
- BALES, &c., not to be placed on sidewalks, 701, 718.
- BALLAST. See *Boats and Lighters*.
- BALLOTS, after being counted to be sealed up and indorsed, 157.  
to be sent sealed to city clerk, 158.  
city clerk to receive and retain same for sixty days, 158.
- BANKS, authorized to contract with the city for payment of interest, 195.
- BARK, sale and measurement of, 822, 825. See *Wood*.  
city may regulate the inspection, &c., of, 823.  
measurers of, how appointed, 825.
- BAROUCHE, 97. See *Carriages*.
- BASTARD CHILDREN, provisions concerning support, &c., of, 447, 448.
- BATHING, so as to be exposed to view, forbidden, 711.
- BEACHES, penalty for taking earth or gravel from, 243.
- BEACON, 241, 242.
- BELLS, to be attached to horses, harnessed to sleigh or sled, 106.  
penalty, 106.  
ringing for false alarm of fire, penalty for, 207, 226.  
in East Boston to be rung, in case of fire, 224.  
tolling of, at funerals, 311.  
not to be rung in streets, to give notice of business, unless, &c., 712.
- BELMONT SQUARE, 116.
- BIBLE, some portion of to be read daily in schools, 636.  
to be furnished to prisoners, 353.
- BILLIARD TABLES, provisions concerning, 62. See *Bowling Alleys, &c.*
- BILLS, placards, notices, not to be posted without consent, 418; penalty, 418. See *Notices and Placards*.
- BIRD ISLAND, no earth or stones to be taken from without license, 243.
- BIRTHS, registry of, 621, 624. See *Registry and Returns*.
- BLACKSTONE SQUARE, 117.
- BOARD OF ACCOUNTS, who shall constitute, 37.  
their duties, quorum, compensation, 37.

BOARD OF ACCOUNTS, (*Continued.*)

clerk of police court to render quarterly account of criminal costs and fees, 141.

statements of expenses of jails, &c., to be presented to, 356.

BOARD OF AUDITORS to examine accounts of overseers of the poor, 433.

BOARD, COCHITUATE WATER, 794. See *Water*.

BOARD OF EDUCATION, 640-642. See *Schools*.

BOARD OF HEALTH. 17, 290, 306. See *Health*.

BOARD OF LAND COMMISSIONERS, 480. See *Public Lands*.

BOARD OF STATE CHARITIES, 446, *note*.

BOARDS. See *Lumber*.

BOATS AND LIGHTERS, provisions respecting weighing and marking, 38-46.

weigher and inspector-in-chief of, may be chosen, 38, 40.

bond of, 41, 47.

assistant weighers and inspectors, 38, 41.

who shall not be chosen, 45, 46.

choice, term of office, bond, &c., 41.

duty of weigher and inspector-in-chief, 39, 41-46.

of assistant weigher and inspectors, 39, 41-46.

lighters to be marked, 38, 42; deduction to be made, 38, 42, 43.

fees for inspection, weighing, and marking, 40, 44.

penalty for not keeping within certain bounds during the marking, 39, 43.

marks to be examined annually, 39, 43.

duty of inspectors in case of stones, &c., sold by weight, 38, 43;

penalty, 40, 44.

accounts, how to be kept, 45.

an office to be kept, and office hours, 45.

penalty for neglect of master of vessel, 40, 45.

violation of ordinance by weigher, 40, 45.

master to report arrival at office of inspector, 45.

to produce certificates when demanded, 45.

stones, &c., not to be purchased for city unless, 45, 46.

BOILERS, coppers, and tar-kettles, regulated, 207.

not to be placed under any sidewalk, 721, 722.

weighers of shall be appointed by aldermen, 816.

to be sworn; removal; duties; fees, 816, *note*.

BOMB-SHELLS, not to be thrown, 237.

- BONDS OF CITY OFFICERS, may be required by city council, of  
     persons having collection, custody, &c., of public money, 16.  
     what city officers to give bonds, penalty, &c., 46, 47.  
     form and condition of, approval, &c., 47.  
     custody of the several bonds, 46.  
     effect of death or insolvency of surety, 47.  
     sufficiency of bond, to be inquired into annually, 47, 48.  
     if bond insufficient, new one to be given after notice, 48.  
     failure to give new bond after notice to be cause for removal, 48.  
     city clerk to furnish free of charge suitable blanks for bonds, 48.  
     condition to be inserted in bond of officers making contracts in be-  
         half of the city, 47.  
     of constables, to be given to treasurer, 122.  
     suits on constables' bonds, 123.  
     copy of same to be given to persons applying therefor, 123.  
     of clerk of police court, to be taken, 137.  
         penalty of, 137.  
     for sale of public lands, to be deposited with treasurer, 482, 483.
- BONFIRE, penalty for making, 227,
- BOSTON. See *City of Boston*.
- BOSTON FARM SCHOOL, Thompson's Island exempted from taxa-  
     tion, 55.  
     enactments respecting, 55, *note*; 433 and *note*.
- BOSTON FREE BRIDGE, 68. See *Bridges*.
- BOSTON SOUTH BRIDGE, 67. See *Bridges*.
- BOSTON WATER POWER COMPANY, agreement with as to drain-  
     age, 657, *note*, 706.
- BOUNDARY LINES.  
     between Boston and Roxbury, 49-53, 58-60.  
         Dorchester, 53-55, 56, 60.  
         Brookline, 55, 56, 61.  
         Chelsea, 57.  
     perambulations of, 57-61.  
     general provisions respecting perambulations, 57, 58.
- BOW AND ARROW, not to be used in the streets, or on the common,  
     711.
- BOWLING ALLEYS AND BILLIARD TABLES.  
     board of aldermen may license for certain purposes, 62.  
     rules and regulations for licensing, 65.  
     licenses may be revoked, 62.

- BOWLING ALLEYS AND BILLIARD TABLES, (*Continued.*)  
 penalty for keeping without license, 62.  
 penalty for admitting minors to without license, 62.  
 penalty for keeping gaming implements and gaming in, 63, 64.  
 officers may enter to enforce the laws, 62, 63.
- BOW WINDOWS, not to project into streets more than one foot, 701,  
 713. See *Windows*.
- BOXES, not to be placed on sidewalk, 718.
- BOYLSTON, John, trustees under will of, 430, 433. See *Trustees of John Boylston's Charitable Donations*.
- BOYLSTON ASYLUM, united with House of Reformation, 380.
- BOYLSTON'S CHARITABLE DONATIONS, provisions concerning, 380.
- BOYLSTON SCHOOL AND HOUSE OF REFORMATION, 380.
- BOYS. See *Minors*.
- BRICKKILNS, to be licensed, 227.  
 penalty for erecting, &c., without a license, 227.
- BRIDGE, *Dover Street*, name established, 86; incorporated, 67.  
 original provisions of act of incorporation, 67.  
 regulation of draw, 67.  
 proprietors authorized to transfer franchise and materials to city, 67.  
 transfer to the city, '68.  
*Federal Street*, name established, 86; incorporated, 69.  
 provisions of charter, 69.  
 surrender to city, 70.  
 city authorized to maintain wharves or piers, 70, 71.  
 penalty for injury to, 71.  
 rafts or vessels not to be fastened to, 88, 276.  
 when right to wharves, &c., shall cease, 71.  
 wharves not to be within 40 feet of other wharves, 71.  
*Chelsea Point*, incorporated and provisions of charter, 79.  
 highway may be laid out over, 79.  
*Chelsea Street*, incorporated and name established, 80.  
 highway may be laid out over, 80.  
 made a public highway, 80.  
*Eastern Avenue Corporation*, incorporated, 74.  
 powers and obligations of corporation, 74, 75.  
 locations and construction, 75, 76.  
 petitions for aid from the city, 76.  
 franchise transferred to the city, 78.

BRIDGE, (*Continued.*)

*Charles River and Warren*, 82, 83.  
*Meridian Street*, incorporated, 81.  
 powers, &c., of corporation, 81.  
 city authorized to purchase, &c., 81, 82.  
 purchase by the city, 82.  
 West Boston, Canal and Hancock Free, 83, 84.  
*Mount Washington Avenue*, incorporated, 71.  
 provisions of act incorporating, &c., 71, 72.  
 city to take and hold rights of corporation, 72.  
 applications to city, for aid to build, 72, 73.  
 aid given by the city, 73.  
 bridges, &c., accepted, 73, 74.  
 Boston and Roxbury Mill Corporation, (Milldam,) 85.  
 names of several established, 86.  
 superintendents to be elected, 86, 87.  
 term of office, pay, duties, &c., 87.  
 assistant superintendents, pay, &c., 87.  
 penalties for injuring, 87, 88.

BROAD STREET, authorized to be extended, 703, 704.

BROADWAY RAILROAD (HORSE), acts incorporating, 505-511.

location, tracks to be laid as aldermen direct, 505.  
 written assent of corporation, filed, &c., to votes of aldermen pre-  
   scribing routes, to be deemed locations, 505.  
 notice to be given abutters before locating, 505.  
 may fix rates for transporting persons or property, 506.  
 horse-power only to be used, 506.  
 aldermen may regulate speed and mode of use of tracks, 506.  
 to keep streets in repair and be liable for injuries, 506.  
 persons obstructing road to be punished, 506.  
 obstructing highway to be punished, 506, 507.  
 capital stock, amount, shares, &c., 507, 511.  
   when to be paid in, 508, 510, 511.  
 may purchase and hold real estate, 507.  
 city may purchase franchise, when, &c., 507.  
 grade, gauge, and construction of road to be fixed by aldermen,  
   507.  
 if grade of street must be altered, to be done at expense of corpo-  
   ration, 507.  
 part of road may be discontinued and location revoked, 507, 508.

BROADWAY RAILROAD, (*Continued.*)

- city may take up streets, 508.
- act to be void unless accepted, &c., 508, 510.
- accepted by city council of Boston, 508 *note*, 510 *note*.
- corporation to make returns required by law, 508.
- charter limited to fifty years, 508.
- may be repealed, &c., 508.
- rates of fare between, &c., not to exceed five cents, 508.
- second act, reviving former act, 508.
- third act — tracks may be extended, 509.
- Dorchester Avenue Railroad may be used in part, 509.
- compensation, how determined, 509.
- may connect with other roads, if aldermen consent, 509.
- the roads not agreeing, commissioners may be appointed to determine same, 509.
- report of commissioners to be binding until revised, 510.
- not to be revised within a year, unless, &c., 510.
- compensation of commissioners, 510.
- may purchase of, or sell to, any other company, three fourths of stockholders consenting, 510.
- fourth act — time to pay in capital stock extended, 510.
- capital stock may be increased, &c., 511.
- fifth act — extension of tracks authorized, 511.
- conditions, how fixed, privileges and restrictions, 511.
- may connect with other roads, 511.
- but only to carry passengers to, &c., 511.
- compensation therefor, how determined, 511.
- Suffolk Railroad not to run cars over without consent, 511.
- may enter upon and use tracks of Suffolk, Middlesex, and Cambridge roads, 594.
- may make agreements with Suffolk and Metropolitan roads, 595.
- first location, 512, 513; conditions, 512, 513.
- second location, 514–516; conditions, 514–516.
- third location, 516–518; conditions, 516–518.

## BUILDINGS, laws respecting same not to extend to land annexed from Brookline, 55, 56.

- livery stables not to be erected within 170 feet of any church 88, 89.
- penalty therefor, 89.
- penalty for using building in maritime place, for livery stable, except, &c., 89.

**BUILDINGS, (*Continued.*)**

- penalty for use of building for a stable, for more than four horses, except, &c., 89.
- no person to erect stable or bowling alley without consent, 64 *note*, 89.
- wooden buildings more than 16 feet high, forbidden, except, &c., 89.
- brick or stone wall required between, in certain cases, 90.
- proviso, as to neck lands, 90; penalty, 90.
- duty of board of engineers to prosecute, 91.
- building contrary to statute shall be deemed nuisance, 91.
- city council may regulate buildings in South and East Boston, 91.
- by-laws respecting snow and ice on roofs of buildings, 91.
- notice to be given of intention to build, 92.
- what such notice shall specify, 92.
- board of aldermen to cause numbers to be affixed, 92.
- penalty for numbering, contrary to directions, 92.
- cellar doors and platforms regulated, 93.
- to be lighted when open at night, 93.
- penalty for defacing, 93.
- wooden buildings at South and East Boston regulated, 93, 94.
- not to be erected on east side of Arlington Street, 119.
- owners of buildings pulled down at fire, to have indemnity, 206.
- not to be placed in street, 711.
- not to be moved through streets without license, 711. See *Public Buildings, Streets, and Wharves.*

**BURIALS, 302, 622. See *Health, Registry and Returns.***

of pauper lunatics, 453.

**BURYING-GROUNDS, land at South Boston to be set aside for, 53.**

- to be regulated by board of health, 302.
- dead bodies not to be dug up, &c., without, &c., 302, 311.
- to be under charge of city registrar, 310.
- regulations respecting graves, tombs, and burials, 302, 310.
- to be provided by city, 302.
- no other land in city to be used as such without permission, 302.
- forfeiture for violation, 302, 303.
- board of health may establish penalties, 302; appeal allowed, 303.
- penalty for trespass in any burial-ground, 303, 304.
- closing of burial-grounds, 303.

**BUTTER, how to be sold, 171, 172.****BURNING FLUIDS, sale and storage of may be regulated, 94.**

BURNING FLUIDS, (*Continued.*)

- license for keeping and sale of, 94, 95.
- how long to continue, fees, 95.
- not to be kept and sold without license, 94.
- penalty for keeping, &c., without license, 95.

## BY-LAWS, city council may make and annex penalties, 15.

- when shall take effect, 15.
- shall not be repugnant to constitution and laws, 15, 125, 424.
- to be made respecting warrants for elections, 27.
- need not to be set forth, in complaints, prosecutions, &c., 31, 425.
- respecting weighing vessels, may be made, 40.
- may be made respecting burning fluids, 94.
- respecting carriages may be made, notwithstanding, &c., 97.
- may be made respecting dogs, 147.
- decisions respecting market regulations, 169, 170, *note*.
- decisions generally, respecting, 423, 424, 426, *note*.
- may be annulled by the general court, 424.
- city council have power to make, 424; when to take effect, 424.
- not to be repugnant to laws, 424.
- city council may make, to preserve peace, good order, &c., 424.
- may annex penalties, 425.
- police court to have cognizance of offences against, 426.
- prosecutions under, how may be prosecuted and discontinued, 425, 426.
- how fines shall be appropriated, 426, 427.
- to be denominated "ordinances," 426; enacting style, 426.
- to be examined, enrolled, and recorded, 426, 427.
- to be published in newspapers, 427.
- this provision directory merely, 427.
- may be made respecting expense of common sewers, 655.

CABS, regulated, 97, 102. See *Carriages*.

## CALVES, less than four weeks old not to be sold for food, 305; penalty, 305.

## CAMBRIDGE RAILROAD (HORSE), acts incorporating, 519-526.

- location — tracks to be laid as aldermen direct, 519, 520, 526.
- written assent of corporation, filed, &c., to votes of aldermen prescribing routes, to be deemed locations, 520.
- notice to be given abutters before locating, 523.
- grades, gauge, and route, how determined, 522.
- to be operated by horse-power only, 520.

CAMBRIDGE RAILROAD, (*Continued.*)

- aldermen may regulate speed and mode of use of tracks, 520.
  - to keep streets, &c., in repair, and be liable for damages, 520, 521.
  - penalty upon for obstructing streets, &c., 521.
  - penalty for obstructing tracks, &c., of, 521.
  - capital stock, amount, shares, &c., 521, 526.
  - may purchase and hold real estate, 521.
  - to make annual returns, 523 ; limit of charter, 523.
  - city may take up streets over which track is laid, 522.
  - tracks may be removed at expense of railroad, 523.
  - rates of fare in Boston not to exceed five cents, unless, &c., 523.
  - act to be void unless accepted, &c., 522, 523.
    - accepted by city council of Boston, 522 *note*, 523 *note*.
  - may issue bonds not to exceed, &c., 524, 526.
    - bonds to be approved and certified, 524, 526.
  - sinking fund, trustees, &c., 524, 525.
  - trustees may petition to sell, 525.
  - purchasers may buy under any name by them assumed, 525.
    - proceedings in such case, 525.
  - compensation to Hancock Free Bridge Corporation, 519.
    - if not agreed upon, supreme court may appoint three commissioners, to determine same, 519.
    - award of commissioners, effect, &c , of, 520, 525, 526.
  - may contract with Union Railway Company to transport persons and freight, 526 *note*.
  - may construct certain tracks for Suffolk Railroad Company, 537.
  - first location, 527.
  - second location, 527-531 ; conditions, 528-531.
  - third location, 531-533 ; conditions, 531, 533.
  - fourth location, 533, 534 ; conditions, 533, 534.
  - fifth location, 534, 535 ; conditions, 534, 535.
  - sixth location, 535-538 ; conditions, 536-538.
- CAMPHENE, may be regulated by city council, 94, 208.
- regulations as to the keeping and sale of, 94, 95, 208.
- CANAL BRIDGE, 84.
- CANDLE, lighted, forbidden in ropewalk, barn, or stable, unless, &c., 208.
- CANNON, 230. See *Fire-arms*.
- CANOPY, not to project into streets, more than, &c., 700.
- CARPETS, where not to be shaken, 121.

- CARRIAGES, drivers of, meeting, shall turn to the right, 96.  
 drivers of passing shall turn to the left, 96.  
 bells to be attached to horses, with sleigh or sled, 96, 97.  
 penalty for violation, and action for damages, 97.  
 above, not to apply to horse railroads, 97.  
 driver not to leave his horses, without, &c., 97.  
 board of aldermen may make rules respecting, and annex penalties, 97.  
 not to impair right of cities to make by-laws, 97.  
 rules to be published before taking effect, 97.  
 one dollar may be demanded for license, 97.
- RULES AND REGULATIONS.
- hackney carriage* defined, 97.  
 no person to set up, &c., without license, 97.  
 licenses to be granted for, and may be revoked, 98.  
 record of licenses to be kept by chief of police, 98.  
 one dollar to be paid for license to chief of police, 98.  
 chief of police to pay over same quarterly, 98.  
 when to expire and how transferred, 98.  
 who shall be liable to forfeitures, &c., 98.  
 penalty for not taking out and paying for license, 98.  
 manner of marking and numbering, 98, 99.  
 when used at night, to have glass lamps lighted and numbered, 99.  
 no other number to be used, 98.  
 omnibuses, cabs, and coaches, how numbered, 99.  
 carriage and horses not to be left, unless, &c., 100.  
 shall not stand, except in place assigned, 100.  
 shall not stop abreast of another carriage, 100.  
 shall not stop to obstruct streets, &c., 100.  
 driver shall wear a badge, 100.  
 board of aldermen may give directions for standing and route, at theatre, &c., 100.  
 rates of fare, 101.  
 amount of baggage to be carried, 101.  
 carriage not to be driven by minor, unless, &c., 101.  
 license to be granted to owner or lessee only, 102.  
 penalty if any other person takes out license, 102.  
 persons ceasing to own, to surrender license, 102.  
 penalty for riding on, without permission, 102.  
*omnibus*, license for shall specify time for starting, 102, 103.

CARRIAGES—RULES AND REGULATIONS, (*Continued.*)

- not to start until five minutes after preceding one, 103.
- stopping of, regulated, 103.
- receiving and leaving passengers, 103.
- shall not leave designated route, 103.
- penalty for riding on steps, &c., of, without permission, 102.
- trucks, wagons, drays, carts, handcarts, sleighs, sleds, and hand-sleds*, to be licensed, 103.
- to be marked and numbered, 103.
- not to be used without license, 103, 104.
- board of aldermen may grant and revoke licenses, 104.
- record of, and fees for license, 104.
- chief of police to make record of, and pay over sum for same, 104.
- when licenses shall expire, 104.
- how licenses may be transferred, 104.
- who shall be liable to forfeitures, 104.
- penalty for not taking out and paying for license, 104.
- not to be driven by minor, unless, &c., 104, 105.
- number of horses to one truck, &c., 105.
- special permission may be granted for a larger number, 105.
- pace at which horses shall go, and mode of driving, 105.
- penalties, 105, 106.
- length of truck and weight of load, 105, 106.
- Carriages in general*, time during which they may stand in street, 106.
- penalty, 106; physicians' carriages and those of marketmen excepted, 106.
- bells required when snow is on the ground, 106.
- shall not stop so as to cross the flag-stone, &c., 106, 107.
- manner of holding reins, 107; pace at which horses shall go, 107.
- driver shall remain near horses, 107.
- shall not obstruct streets, 107; shall not snap or flourish his whip, 107.
- how trucks, &c., shall be placed, 108.
- loading and unloading regulated, 108.
- cart, &c., to be placed near sidewalk, 108.
- not more than one range to be placed on each side, in streets, 108.
- in squares, &c., to be placed as directed by board of aldermen, 108.
- horses harnessed to, not to be fed in streets, 108, 109.
- without horses harnessed to, to be removed at certain times, 109.
- at Faneuil Hall Market, regulated, 170. See *Faneuil Hall Market*.

CARRIAGES — RULES AND REGULATIONS, (*Continued.*)

not to be washed in streets, 322; not allowed on sidewalks, 717.

children's hand carriages excepted, 717.

## CARTS, regulated, 103-109.

of city, superintendent of health to have care of, 309.

See *Carriages* and *Faneuil Hall Market*.

## CASTLE ISLAND, 241.

## CATTLE, not allowed to go at large, 121.

may be impounded, 190-194.

## CASK, not to be placed on sidewalk, 718.

CELLAR DOORS, regulated, 93, 700, 713, 714, 721. See *Buildings and Streets*.CEMETERY, may be established by city of Boston, &c., 302, 411, 412-418. See *Mount Hope Cemetery*.

## CENTRAL SQUARE, 117.

## CHANNEL LINES, established, 249, 250.

description of, 249, 250. See *Harbor*.

## CHARCOAL, dimensions of baskets of, 824.

illegal baskets to be seized and destroyed, 824.

persons having possession of, may be arrested, 824.

measures, &c., to be sealed, 824.

penalty for using other measures, 824; forfeitures, how recovered, 824.

CHARIOT, 97-102. See *Carriages*.CHARITIES, *Board of State*, 446, *note*.

## CHARLES RIVER BRIDGE, 82.

## CHARLESTOWN, water may be carried to East Boston, through, 791.

CHARTER. See *City Charter*.

## CHELSEA, conditions of connection with Boston, 109, 110.

to assign county property to Boston, 109.

shall not hinder applications to legislature by city of Boston, &c., 110.

may apply to be set off to any other county, 110.

connection to continue until, &c., 110.

county property to remain vested in Boston, 110.

act to be accepted by inhabitants, 110; acceptance of same, 110.

county property to belong to Boston, 110.

Chelsea not to be taxed for county purposes, 111.

city of Boston to assess county taxes, 15, 16.

divided, and North Chelsea and Winthrop incorporated, 111.

CHELSEA, (*Continued.*)

beaches, 244, *note*.

water may be carried to East Boston, through, 791.

CHELSEA POINT BRIDGE, 79. See *Bridge*.

CHELSEA STREET BRIDGE, 80, 86. See *Bridge*.

CHESTER SQUARE, 117.

CHIEF ENGINEER, of fire department, 204, 211. See *Engineers*.

duty in regard to wooden buildings, 90, *note*, 91.

duty as to gunpowder, 232-236.

CHIEF OF POLICE, bond of, 46.

may enter billiard-rooms, &c., 62.

penalty for obstructing entrance of, 63.

may arrest persons gambling at public gatherings, 64.

to keep record of licenses granted to carriages, trucks, &c., 98, 104.

money received for, to be paid over quarterly, 98, 104.

license to be surrendered to, 102, 104.

not to be paid for services in criminal cases, 125.

list of licensed dogs to be given to, 145.

to kill unlicensed dogs, going at large, 146.

to pay over money to treasurer quarterly, 199.

to lay quarterly statements of money received before city council,  
200,

to aid mayor in enforcing health laws, 307.

may request city physician to examine police, 314.

may prosecute for fines and forfeitures, 425.

and all violations of the laws and ordinances, 470.

general powers and duties of, 465, 467-469.

appointment of, 468; oath and bond of, 469.

to keep records of business of department, 469.

to make reports quarterly or oftener, 470.

compensation, 470; office to be kept open, 470.

to prosecute all who disturb sidewalks, 722.

to be notified of political meetings in wardrooms, 777.

to detail sufficient force to preserve order at such meetings, 778.

See *Police*.

CHILDREN, not to be excluded from the public schools for race, color,  
or religious opinions, 644.

between 8 and 14 to attend school 12 weeks yearly, 643.

regulations concerning the employment of, 645, 646.

to be vaccinated before they are 2 years old, 295.

CHILDREN, (*Continued.*)

not to attend school until vaccinated, 644.

See *Apprentices, House of Reformation, Minors, Truants, and Schools.*

## CHIMNEYS, to be examined and repaired, 112.

penalty for not repairing, &c., 112.

defective chimneys may be abated, 112.

sweepers to be licensed, 113.

penalty for sweeping without license, 113.

foul chimneys to be examined, 113; fires not to be kept in them, 113.

penalty for burning chimneys, &c., 114; proviso, 114.

## CHIMNEY SWEEPERS, to be licensed by board of aldermen, 113.

rates of compensation to be fixed by the board of aldermen, 113.

penalty for sweeping without license, 113.

penalty for employing unlicensed sweepers, 113.

CITIES, general powers and duties of, 29 *note*.CITY CHARTER, passage of the acts granting, 1, *note*, 27, 28.

right of legislature to amend or alter, 27.

to be adopted by inhabitants, 28, 29; adopted by citizens, 1, *note*.

CITY BUILDINGS, 17, 474-479. See *Public Buildings*.CITY CLERK. See *Clerk of City*.

## CITY COUNCIL, to consist of board of aldermen and common council, 3.

to divide the city into twelve wards, 3, 772.

how organized, 12; powers and duties of, 15, 16.

to have powers formerly vested in the town of Boston, &c., 15.

to make ordinances and annex penalties, 15.

penalty not to exceed fifty dollars, 15.

to provide for the assessment and collection of taxes, 15, 16.

may choose assessors or provide for their election, 16.

may require bonds of persons having collection, custody, and disbursement of public moneys, 16.

to provide for the appointment of certain city officers, 16.

to prescribe their duties and fix their compensation, 16.

to choose a register of deeds, when city shall compose one county, 16.

to have care and custody of city property, 17.

to have power to purchase property, 17.

may not lease or sell the Common or Faneuil Hall, 17.

CITY COUNCIL, (*Continued*.)

- powers as to public health and quarantine of vessels, 17.
- members of, ineligible to salaried offices, 18.
- to choose city treasurer in convention, 17, 18.
- all boards and officers entrusted with public money accountable to, 21.
- shall publish and distribute annual statement of receipts, expenditures, and city property, 21.
- to direct how warrants for elections shall be served, &c., 27.
- may repeal any by-law or ordinance, 28.
- may make ordinances respecting weighing vessels, 40.
- may authorize wooden buildings in South and East Boston, 91.
- may make rules respecting removal of snow and ice from roofs of buildings, 91.
- may adopt rules respecting storage and sale of camphene and other inflammable fluids, 96.
- to order expenditures of moneys on public garden, squares, &c., 120.
- may alter or abolish rules, &c., of aldermen as to common, &c., 122.
- no member of to be interested in certain contracts, 126.
- contracts of members with the city void, unless, 126.
- duty of committees of, in making contracts, 126, 127.
- may make by-laws respecting dogs, 147.
- powers and doings in relation to extending Faneuil Hall Market, 166, 167, *note*.
- may direct where city pound shall be established, 191.
- to appoint joint committee of accounts, 196; and of finance, 198.
- to be apprised by auditor, when expenditures exceed appropriations, 197.
- city officers to lay quarterly statement of moneys received, before, 200.
- annual statement to be made to, by auditor, 200.
- powers in relation to fires, and fire department, 204–226.
- may exercise such powers by agency of any persons or boards, 204.
- may appropriate money for members of fire department injured, 205.
- money for relief of disabled firemen to be expended under direction of, 205.
- may regulate the keeping of gun cotton, camphene, &c., 208, 209.
- may remove fire engineers, 211; pay of department, 218.
- to appoint harbor master, 273.

CITY COUNCIL, (*Continued.*)

- to appoint joint committee on Fire-Alarm Telegraph, 225.
- may alter and amend rules of committee, 226.
- to appoint committee on the harbor, 277.
- may regulate sales of goods by minors, 278.
- may remove weighers of hay, 283.
- may make rules respecting hay scales, 283.
- to have powers of board of health, 290.
  - such powers may be exercised by agency of others, 290.
- may constitute either branch or a committee the board of health, 290,
- powers and duties of, as board of health, vested in board of aldermen, 17, 306.
- to appoint five consulting physicians, 313.
- to choose city physician, 313.
  - port physician, 315.
  - superintendent of health, 307.
- may make ordinances, &c., respecting city hospital, &c., 325.
- may maintain lunatic hospital and make rules for same, 330, 333.
- to appoint master of house of correction, 347, 348.
  - overseers of same, 343, 369.
- may remove overseers, 370.
- to determine compensation of overseers, 343.
  - of master, 357.
- to appoint directors of house of industry, 374.
- to erect house of reformation, or use buildings therefor, 376.
- to appoint directors, 376.
- may found and maintain a public library, 395.
- to make rules respecting public library, 395.
- power as to ordinances respecting survey of lumber, 403, *note*.
- may elect messenger to city council, 408.
- may elect trustees of Mount Hope Cemetery, 412.
- city clerk to keep records of, 423.
- powers of, in regard to making by-laws, 424, 425.
- to designate papers in which ordinances shall be printed, 427.
- ordinances of, to be published, 427.
- may establish regulations concerning the police, 465.
- chief of police to enforce ordinances of, 469.
- to appoint joint committee on printing, 473.
  - on public buildings, 476.

CITY COUNCIL, (*Continued.*)

- to make regulations respecting public buildings, 474, 476.
- no expenditures exceeding \$ 200 to be made on same without vote of, 477.
- to choose superintendent of public buildings, 478.
- no building or land appurtenant to be sold without vote of, 479.
- superintendent of public buildings to report to, 479.
- to appoint committee on public lands, 480.
- to make rules respecting same, 481.
- to choose superintendent of public lands, 481.
- no expenditure on public lands to be made without sanction of, 483.
- powers of, as to horse railroads, 510, 522. See *the Titles of the several Horse Railroads.*
- may make rules to secure a more perfect registration of births, &c., 624.
- may require school committee to elect superintendent of public schools, 638.
- may make provisions respecting junk shops, &c., 650.
- to choose superintendent of common sewers, 658.
- to choose city solicitor, 664, 665.
- may direct the application of money raised to aid wife, &c., of volunteer, 667.
- may determine how applications for laying out highways, &c., shall be made, &c., 691.
- may empower surveyors of highways to regulate width and height of sidewalks, 699.
  - to accept sidewalks, 699.
- may order sidewalks to be maintained by city, 699.
- to choose superintendent of streets, 707.
- superintendent of streets to make reports to, 708.
- to have concurrent jurisdiction with board of aldermen, in laying out streets in certain cases, 693.
  - in the erection, alteration, or repair of county buildings in certain cases, 475.
- powers of, as to assessment of taxes, 743-746, *note.*
  - as to election of assessors, &c., 744, 764.
- may assess city and county taxes separately, or together, 732.
- to choose assessors, 764 ; to determine their compensation, 764.
- to choose assistant assessors, 765 ; to determine their compensation, 765.

CITY COUNCIL, (*Continued.*)

- may remove assessors, 765 ; may elect chairman of assessors, 765.
- to appoint committee on assessors' department, 765, 766.
- record of abatements of taxes to be laid before, 766.
- to appoint water commissioners, 783 ; to fix their compensation, 784.
- to make ordinances, &c., in relation to water, 783.
- may issue water scrip, 786 ; may make temporary loans, 787.
- may issue additional scrip, 787 ; to regulate the price of water, 787, 788.
- to choose Cochituate Water Board, 794.
- appropriations of, not to be exceeded by said board, 795.
- said board to report to, 795.
- to send schedule of water-rates to, 795.
- to choose a water registrar, 796.
- water not to be sold and delivered out of the city, unless by vote of, 798.
- may provide for salary of sealers of weights and measures, 816, 818.
- may make regulations respecting sale of bark, &c., 823.
- may provide for appointment of surveyors, &c., 823.
- witnesses may be summoned to testify before, 820.
- proceedings in such cases, 820.
- revised ordinances of, approved, 827.

CITY DEBT, 198, 199. See *Debt*.

CITY ENGINEER, 162, 163, 796. See *Engineer and Water*.

## CITY HOSPITAL,

- may be established and maintained, 324.
- note upon the history of, 324, *note*.
- regulations may be made, 325.
- not to be located near a schoolhouse or church, 325.
- board of trustees, how elected, 325, 326.
- tenure of office, 325, 326 ; organization, 326.
- trustees may appoint physicians and surgeons, 326.
- subordinate agents, assistants, &c., 326.
- establish their compensation, 326.
- may make rules and regulations, 326.
- may elect superintendent, 326.
- his compensation, removal, hours and duties, 326, 327.
- his report, 328.

CITY HOSPITAL, (*Continued.*)

superintendent to have charge of building for smallpox and other infectious diseases, 327.

rules and regulations concerning, 327.

trustees may make repairs, alterations, &c., 327.

expense not to exceed the appropriation, 327.

not to change occupancy of building without consent of city council, 327.

to make estimate of expenses, 327.

not to spend more than appropriation, 327.

duty of in regard to receipt and investment of gifts and bequests, 328.

intended for temporary relief, 327; who may be admitted, 327.

separate accommodations for paying patients, 327.

extra compensation to be credited to appropriation for hospital, 327.

report of superintendent, 328.

gifts, bequests, &c., to, 328; how to be invested, 328, 329.

CITY LANDS, 17, 482, 483. See *Public Lands*.

CITY MONEYS, 16, 21, 196, 198, 482. See *Public Moneys*.

CITY OF BOSTON, incorporated, 1, *note*.

to have rights and duties of town of Boston, 15.

to be divided into wards, 3, 772.

powers of the town of Boston vested in city council, 3, 15.

seal of the, 29; general powers and duties of, 29 *note*.

actions, &c., by and against, where brought, 30.

inhabitants of, shall not be disqualified as magistrates, jurors, appraisers, &c., in suits where city is interested, 30, 31.

to be bound by recognizance, authorized by board of aldermen, 14, 31.

authorized to purchase Dover Street Bridge, 67.

transfer of same to, 67, 68; to assume care of Federal Street Bridge, 69, 70.

authorized to construct wharves, &c., at free bridge, 70, 71.

may recover damages for injury thereto, 71.

may take the rights of Mount Washington Avenue Corporation, 72.

may build Eastern Avenue, 77.

authorized to purchase Chelsea Point Bridge, 79.

may purchase Meridian Street Bridge, 81, 82.

county property to be transferred to, 110, 128.

to have management of county buildings, 129.

CITY OF BOSTON, (*Continued.*)

- may apply to legislature for alterations of laws respecting courts, without opposition by Chelsea, 110.
- authorized to contract with banks for payment of interest, 195.
- Rainsford Island and state arsenal may be released to, 243.
- may establish cemetery, and make rules, &c., 302, 411.
- to recover for support of poor persons in House of Industry, 375.
- authorized to establish a public library, 395.
- may establish city hospital, 324.
- may erect and maintain lunatic hospital, 330.
- remedies of, for support of lunatics, 335.
- may require the school committee to appoint a superintendent, 638.
- may furnish school books, 636, 637.
- shall pay expense of vaccination, &c., 295.
- to pay one quarter of expense of common sewers, 659.
- powers granted to, in relation to water from Long Pond, 781-793.
- to be liable for damages for taking land therefor, 784.
- may commence proceedings for damages in case other party neglects, 785.
- may make tender, &c., for damages, 786.
- may purchase property, &c., of Aqueduct corporation, 790.
- may carry water to East Boston, 790, 791.

## CITY OFFICERS, bonds of certain, 46-48.

- not to be interested in contracts with city, 124-126.
- their contracts with city to be void unless, 126.
- to pay over moneys to treasurer, 199.
- office hours of certain, 421-423.

## CITY PHYSICIAN, election, term of office, removal, &amp;c., 313.

- vacancy in office, how filled, 313; compensation, 313.
- to examine into nuisances, causes of sickness, &c., 313.
- office to be provided for, 314; hours of attendance, 314.
- to vaccinate inhabitants, 314; to give certificates of to children, 314.
- to keep supply of vaccine virus, 314.
- to examine into all causes of disease, 314.
- to attend at jail, &c., 314; to keep record of smallpox cases, 315.
- to keep records of office, 315; harbor master to report certain vessels to, 315. See *Health*.

CITY PROPERTY, 17. See *Public Property*.

## CITY REGISTRAR, to pay over money quarterly, 199.

CITY REGISTRAR, (*Continued.*)

- to lay statement of money received before city council, 200.
- duties of, as to interment of the dead, 309–312.
- office hours of, 422 ; bond of, 46.
- city may choose a registrar, 623.
- election, term of office, removal, vacancy, 624.
- duties and compensation of, 624, 625.
- may employ assistant registrars, 624, 625.

## CITY SEAL, 29.

CITY SOLICITOR, 199, 426, 664, 666. See *Solicitor*.

CITY TREASURER. See *Treasurer*.

CLERK, *of city*, to enter returns of votes for mayor on journal, 6.

- returns of votes for aldermen, 9.
- to record certificate of oaths of office, 12.
- to be chosen by board of aldermen and common council in convention, 13.
- to be sworn, 13 ; term and tenure of office, 13 ; his duties, 13.
- vacancy in office of, how filled, 14 ; clerk *pro tempore*, 14.
- to enter returns of votes for state and national officers on journals, 25.
- to sign certificate of result of same, 25.
- to act as clerk of general meetings of citizens, 27.
- bond of, 46 ; how executed and approved, 47.
- to provide suitable blanks for bonds of officers, 48.
- to issue licenses for billiard saloons, 65.
- constables' bonds to be filed in office of, 124.
- not to be allowed extra compensation for official services, 125.
- to issue licenses for dogs and post list of same, 145.
- to procure envelopes for voting at elections, 153.
- to examine election returns, 155, 157.
- penalty for not making required returns, 157.
- to furnish to clerks of wards suitable seals, &c., 158, 159.
- to pay over moneys to city treasurer, 199.
- to lay quarterly statement before city council, 199, 200.
- may require peddler to exhibit his license, 281.
- power, &c., in drawing jurors, 388.
- penalty upon for fraud in drawing, 389.
- duty of respecting burnt or dangerous buildings, 419.
- to enter in a book nominations by the mayor, 419.
- office hours of, 422.
- to have care of records, documents, &c., 423.

**CLERK, of city, (Continued.)**

- to attend and keep records of city council, 423.
- to record all ordinances in a book, 427.
- duties in relation to births, marriages, and deaths, 621-623.
  - such duties transferred to city registrar, 623.
- to transmit blank forms of school returns to school committees, 640.
- report of school committee to be deposited with, 641.
- duty of, in distributing school returns, blanks, registers, &c., 642.
- to make record of soldiers, &c., comprising city quota, 674, 675.
  - of seamen in the naval service, 675.
- to deliver copy of order relating to furnaces, &c., 680.
- to keep a record of streets, and acceptances of sidewalks, 689, 717.
- to inform assessors of abatements of taxes made by board of aldermen, 766. See *Registrar*.

*of common council* to record certificate of oaths of office, 12.  
 how chosen, 14; to be sworn, 15; his duties, 15.

*of courts*, 131, 132, 137-144. See *Police Courts*, &c.

*of ward*, how chosen, 4.

- shall be resident of ward, 4; shall keep record, 5.
- shall preside in absence of warden, 5.
- shall be under oath 4, 5; may administer oath to warden, 5.
- to certify record of votes, 5, 6, 9, 10, 25.
- to deliver same to clerk of city, 6, 9, 11, 25.
- to sign certificate of election of common councilmen, 4.
- voting list to be delivered to, 24.

*of committees*, when and how chosen, 421, 422.

his duties and compensation, 422.

**COACHES**, regulated, 97-103. See *Carriages*.

**COAL**, to be sold by weight except, &c., 823.

weighing and certificate of, 823, 826.

weighers of, to be appointed, 823, 826.

sellers of not to be, 823, 826.

appointment, removal and fees of weighers of, 823, 826.

not to remain in street longer than, &c., 710.

not to be placed on sidewalks, 718.

**COAL HOLES**, regulated, 714, 715, 720-722. See *Streets*.

**COASTING** on sleds in streets forbidden, 711.

**COCHITUATE WATER BOARD**, 792-808. See *Water*.

**COCOA**, penalty for roasting, except in licensed building, 207.

**COHORN**, 230. See *Fire-arms*.

**COMMERCIAL STREET**, authorized to be extended, 703, 704.

COMMISSIONERS, to determine matters affecting railroads, 494, 499.

See *Railroads*.

on Back Bay to fill up certain lands, 119.

may modify agreements respecting drainage, 706.

COMMISSIONERS OF INSOLVENCY, 132.

COMMON, not to be sold or leased by city council, 17, 481.

history, &c., of, 115.

to be under care and custody of board of aldermen, 120.

aldermen may make rules, &c., 122.

expenditures on, not to exceed appropriations, 120.

police officers may remove offenders from, 120.

horses not to be ridden upon except at military exercise, &c., 120.

sward, gravel, &c., not to be taken from, 120.

trees not to be injured, 120 ; filth, &c., not to be placed on, 121.

carpets not to be shaken or cleansed thereon, 121.

horses, cattle, &c., not to go at large upon, 121.

penalties for violation of ordinances respecting, 122.

wheelbarrows, handcarts, &c., not allowed upon, 121.

ball-playing, &c., upon, forbidden, 121.

preaching upon without license, forbidden, 121.

walking upon flower-beds and throwing stones on, forbidden, 121,  
122.

shooting with bow-and-arrow on, forbidden, 711.

exposing gaming tables on, forbidden, 711.

COMMON LANDS, sward, gravel, &c., not to be taken from, 120.

COMMON COUNCIL, to consist of forty-eight persons, 3.

with board of aldermen to compose city council, 3.

president of to issue warrant for election in case no mayor or  
alderman is elected, 8.

election of four members in each ward, 9.

to be inhabitants of the ward, 9.

to be furnished with certificate of election, 4.

council to decide upon qualifications, elections, and returns of mem-  
bers, 11.

when and how to be sworn, 12.

to sit as a separate body, except when in convention, 14.

to choose a president, and clerk, 14, 15 ; sittings to be public, 15.  
vacancies in, how filled, 11.

twenty-five members to constitute a quorum, 15.

with board of aldermen in convention to elect city treasurer, 17, 18.

president of, to be one of the school committee, 22.

COMMON COUNCIL, (*Continued.*)

- members of, not eligible to, and cannot hold salaried office, 18.
- reports of superintendent of public lands, to be sent to, 482.
- to appoint committee to nominate assistant assessors, 764.
- president of, may swear witnesses, 820 ; and issue warrants for, 821.

## COMMON CRIERS, regulations respecting, 142, 143.

## COMPLAINTS under by-laws, &amp;c., 31, 425.

- it shall not be necessary to set forth such by-law, &c., 31, 425.
- city solicitor, &c., may enter a *not pros*, 426.

## CONSTABLES, to be appointed by mayor and aldermen, 122.

- mayor may remove for gross misconduct, 124.
- to give bonds, 122 ; condition of bond, powers of constables, 122, 124.
- to give additional bond for execution of warrants committed to them by the treasurer, 123.
- suits upon bonds in the name of treasurer, 123.
- copy of bond to be given to persons applying for same, 123.
- to serve warrants for ward meetings, 160.
- for meetings of citizens in Faneuil Hall, 161.
- firemen exempt from serving as, 205.
- treasurer and collector may issue his warrant to, 734.
- duties of, as to collection of taxes, 748-764.

CONTAGIOUS DISEASES, 290, 297. See *Health and Infectious Diseases.*

## CONTRACTS AND EXPENDITURES, when appropriations are deficient, committees to report the fact, &amp;c., 126, 127.

- committee in such case to make no contract until authorized, 127.
- for work to be done by persons confined in the House of Correction, 343, 344.

## CONTRACTS WITH CITY OFFICERS, city officers and agents not to receive commissions, &amp;c., on contracts or purchases, &amp;c.

- 124, 125.
- penalty on officers, &c., for receiving, 125.
- on persons for offering commissions, or bonus, &c., 125.
- auditor may require persons presenting claims to make oath, &c., 125.
- no city officer, receiving a salary, to have fees or extra compensation for official services in criminal cases, 125.
- necessary and reasonable disbursements to be allowed, 125.

CORD WOOD, dimensions and measurement of, 822. See *Wood.*

CORONER, how appointed, 133 ; accounts, how audited, 133.

costs of burials by, how paid, 443.

not deeming an inquest necessary, shall bury the dead body of a stranger, 443.

CORRECTION, HOUSE OF, 337, 372.

See *House of Correction*.

COSTS, in police court, how taxed, accounted for and paid, 139.

examined and allowed by board of accounts, 37.

in prosecutions for crimes, 133-135.

COUNTY. See *County of Suffolk, County Officers*.

COUNTY BUILDINGS, to belong to and be under care of city of

Boston, 128, 129 ; expenses of, paid by, 135.

to be provided by the city of Boston, 129, 475.

board of aldermen to provide for erecting, 475.

not to be under charge of joint committee, 478.

superintendent of public buildings to have charge of, 478.

COUNTY COMMISSIONERS, board of aldermen to perform duties of, 14, 130.

in Chelsea, North Chelsea, and Winthrop, 130.

powers and duties of in relation to houses of correction, 341-369.

as to licensed houses, 398-400.

as to railroad crossings, damages, &c., 491-496.

See *House of Correction, Licensed Houses, and Railroads*.

COUNTY OFFICERS, judge of probate and insolvency, 130.

district attorney, 130, 131.

assistant district attorney, 131.

sheriff, 131, 134.

clerks of courts and assistant clerks, 131, 132, 134.

register of probate and insolvency, 132.

commissioners of insolvency, 132.

register of deeds, 132, 133, 135.

treasurer, 133.

county commissioners, aldermen to act as, 133.

master of House of Correction, 133.

coroners, 133.

inspectors of prisons, 133.

board of accounts, 37, 133.

COUNTY OF SUFFOLK, to include what, 128.

boundaries, powers, duties, &c., of, 128.

former conveyances to county confirmed, 128.

COUNTY OF SUFFOLK, (*Continued.*)

county property belongs to Boston, 128.

Chelsea, North Chelsea, and Winthrop, have no interest in it, 128.

county lands how may be sold, &c., 128.

buildings, to be provided by Boston, 129.

maps, how made and corrected, 129.

concurrent jurisdiction of Suffolk and Middlesex, 129.

jurisdiction over islands in harbor, 129.

aldermen in Boston have powers of county commissioners, 130.

county commissioners of Middlesex to have jurisdiction over Chelsea, North Chelsea, and Winthrop, 130.

not to be allowed for state paupers, unless, &c., 446.

accounts of, for state paupers, how rendered and audited, 446.

COUNTY PROPERTY, to be assigned to and vested in the city of Boston, 111, 128.

COUNTY RECEIPTS AND EXPENDITURES, different items of enumerated, 133-135.

COUNTY TAXES, to be assessed by the city of Boston, 15, 16.

Chelsea not to be taxed for, 111.

COURSING or coasting on sleds in streets forbidden, 711.

COURTS. See *Police Courts* and *Police Court of the City of Boston*.

COURT HOUSE, to be provided by the city of Boston, 129, 475.

board of aldermen to have authority to provide, 129, 130, 475.

not to be under charge of joint committee on public buildings, 478.

COURTS OR PLACES. See *Streets*.

CRACKERS, fireworks not to be sold or set fire to without license, 209.

CRATE, not to be placed on sidewalk, 718.

CRIERS, to be licensed by mayor and aldermen, 142.

term of license, 143; penalty for crying without license, 143.

to keep a list of matters cried, 143; not to cry libellous matter, 143.

penalty for violation, 143.

CRIMES AND OFFENCES. See *By-Laws* and *Ordinances*.

CULLERS OF STAVES AND HOOPS, when and how chosen, 678.

See *Staves and Hoops*.

CURB, defect in, to be repaired at owner's expense, 717.

CUTLERY, not to be ground in the streets without license, 713.

DAMAGED provisions, 304; fish, 306; grain, &c., 305.

DANGEROUS DISEASES, 295, 313-316. See *Infectious Diseases* and *Health*.

- DEAD BODIES, of certain persons to be given to physicians, 301.  
 not to be dug up, &c., without, &c., 301, 310, 311.  
 provisions as to the interment of the dead, 309-312.
- DEATHS, Registry of, 621-625. See *Registry* and *Returns*.
- DEBT, of city, committee on reduction of, 198, 199.  
 duties of committee, 198, 199.  
 what moneys shall be applied to reduction of, 198.  
 what moneys to be passed to credit of committee, 199.  
 what moneys may be lent to treasurer, by committee, 199.  
 debts due the city, to be put in suit, 199. See *Finance*.
- DEEDS, to be executed by mayor, 143. See *Register*, &c.
- DEER ISLAND, to be place of quarantine, 315.  
 port physician to reside at, 315.
- DIRECTORS FOR PUBLIC INSTITUTIONS, board of, how elected, 367-370.  
 to manage affairs of Houses of Correction, Industry, and Reformation, and of the Lunatic Hospital, 367, 368.  
 quorum, 368-370; tenure of office, 370; vacancies, 370.  
 organization of, powers and duties, 370.  
 to have charge of books, &c., make rules and appoint officers, 370.  
 rules, &c., to be approved by city council, 371.  
 to elect superintendent of Lunatic Hospital, 371.  
 to make alterations, improvements, and repairs, 371.  
 expense thereof limited, 371.  
 to advertise for proposals for supplies, &c., if over \$ 300 in amount, 371, 372.  
 to make quarterly and annual reports, 372.  
 may discharge insane prisoners, 368.  
 may remove prisoners from one institution to the other, 369.  
 duties of, in regard to the House of Correction, 343, 344; in regard to House of Industry, 373-375; in regard to House of Reformation, 376-381; in regard to Lunatic Hospital, 330-336.  
 to make certain returns as to paupers, 440. See *House of Correction*, *House of Industry*, *House of Reformation*, and *Lunatic Hospital*.
- DIRECTORS of House of Industry, appointment of, 373.  
 general powers and duties, 373-375.  
 powers and duties as to binding apprentices, 373, 374.  
 to be directors of House of Reformation, 376.  
 to make returns respecting paupers, &c., 440. See *House of Industry*.

- DIRECTORS of House of Reformation, 376. See *House of Reformation*.
- DIRT not to be taken from streets without license, 711.
- DISCHARGE of children from House of Reformation, 378.
- DISEASES. See *Health, Infectious Diseases, and Nuisance*.
- DISTRAINING for taxes, 749. See *Taxes*.
- DISTRICT ATTORNEY, 130, 131.
- DISORDERLY CONDUCT, punishment of, 157, 345, 778.  
     in prison, punishment of, 352; at ward meetings, 773.
- DOGS, by-laws, may be made respecting, 147.  
     penalties for breach of same, 145-148.  
     to extend only to dogs owned or kept in city, 147.  
     to whom money for licenses shall be paid, 145.  
     dogs to wear collars, 145.  
     penalty for neglect and for removing collars, 145.  
     double damages to be recovered for injuries by dogs, 146.  
     when dog may be killed, 146.  
     dangerous dogs to be confined by owner, or killed, 146.  
     penalty for neglect, 146; owner liable in treble damages. 146.  
     no dog to go at large without license, 145, 146.  
     city clerk to grant licenses, 145; fee for same, 145.  
     to post list of same, 145.  
     to give list to chief of police, 145.  
     licenses to be numbered, 144, 145.  
     chief of police to cause dogs at large, without collars, to be killed, 146.  
     proceedings when dog disturbs quiet of any person, 148.
- DORCHESTER RAILWAY (HORSE), acts incorporating, &c., 539-549.  
     Successor of Dorchester Avenue railroad company, 539, *note*.  
     location, tracks, how to be laid, &c., 540.  
     what to be deemed locations, 540.  
     rates of fare, how established, 540, 541; in Boston, not to exceed  
         five cents, unless, &c., 541.  
     horse power only to be used, 541.  
     rate of speed and mode of use, aldermen to determine, 541.  
     to keep streets, &c., in repair, and be liable for damages, 541.  
     penalty on corporation for obstructing streets, 542.  
     penalty for obstructing tracks, &c., 542.  
     capital stock, amount, shares, &c., 542.  
     may purchase and hold real estate, 542.  
     franchise may be purchased, 542.  
     location, when may be revoked, 543.  
     grade and gauge of road, 543.

DORCHESTER RAILWAY, (*Continued.*)

- not to be constructed until, &c., 543.
- other corporations may connect with, 543 ; terms, in case of dispute, how to be settled, 544.
- city may take up streets over which track is laid, 544.
- act to be void unless accepted, &c., 544-548.
- to make returns, 544 ; limitation of charter, 544.
- roadbed in Dorchester, not occupied, not to be repaired by company, 544.
- liable for damages from certain defects, 544, 545.
- extension is authorized, 545 ; tracks, how to be laid, 545.
- powers conferred by former acts continued, 546.
- may issue bonds, not exceeding, &c., 546.
- security for bonds, sinking fund, trustees, 546, 547.
- supreme court may order sale, 547, 540, *note*.
- purchasers may organize as corporation, 548, 539, *note*.
- prior organization of company confirmed, 548.
- purchase of Dorchester extension authorized, 548.
- may sell or lease its road and franchise, 548, 549.
- rights and powers of company purchasing, 549.
- first location, 549 ; conditions, 549.
- second location, 550, 551 ; conditions, 550, 551.
- third location, 551, 552 ; conditions, 551, 552.

DOVER STREET BRIDGE, 67, 68. See *Bridges*.

DRAINAGE, of the Back Bay, provisions concerning, 706, 657, *note*.  
in places for, relative heights how expressed, 659, *note*.

DRAINS, 654-664. See *Health* and *Sewers*.

DRAWBRIDGES in railroads, superintendent to be appointed, 492, 493.  
rules for vessels passing through, 492, 493.  
rules concerning, 496, 497.  
to be kept closed and furnished with signals, 496.  
gates may be erected on each side of, 496.  
if gates are not erected, cars to be stopped before reaching, 496.

DRAYS, regulated, 103-106. See *Carriages*.

DRILLING the militia, no pay to be allowed for, 670.

DRIVERS of carriages, 97-103. See *Carriages*.

DRUGS, adulterated, not to be sold, 305.

DRUNKARD, common, may be sent to House of Correction, 345.

EAST BOSTON, wooden buildings in, regulated, 91.  
rates of fare for carriage to, and in, 101.

EAST BOSTON, (*Continued.*)

city lands in, &c., 148.

digging of graves at, 311 ; included in ward No. 2, 773.

water may be carried to, 791.

vote of city council, to carry water to, 791, *note*.

East Boston Company, incorporated, 148, 149.

authorized to hold Noddle's Island, 149.

estate not to exceed \$ 500,000, 149.

to have power to sell, lease, improve, &c., 149.

to lay out streets, 149 ; to set apart land for public purposes, 149.

## EAST BOSTON WHARF COMPANY'S RAILROAD (HORSE),—

East Boston wharf company may construct, 553.

location and conditions, 553, 554.

EASTERN AVENUE CORPORATION, provisions of act of incorporation, and action of city concerning, 74-78. See *Bridges*.

## EASTERN RAILROAD, city of Boston may lay water pipes under, &amp;c., the bridges of, 791, 792.

## ELECTIONS, of warden, clerk, and inspectors, 4.

of ward officers, in case of absence of incumbents, 5 ; of mayor, 6, 7.

powers of warden, 5 ; to declare votes, 6.

of aldermen, 8 ; of common council, 9 ; qualification of voters, 23.

of city officers to be provided for by city council, 16.

of city treasurer, 17, 18 ; of overseers of poor, 21.

of school committee, 22 ; of representatives to general court, 18, *note*, 26.

of governor and other state officers, and representatives to congress, 25, 26.

voting lists to be made out prior to elections, 24.

no person entitled to vote unless name is on voting list, 24.

ward officers to attend at all elections, 6.

warrants for, how issued, served, &c., 27.

form of warrants for ward meetings, 160.

for meetings of inhabitants at Faneuil Hall, 161.

general laws respecting, 150-159.

disorderly conduct at, punished, 157.

time for opening and closing the poll, how fixed, 161.

of certain city officers, when and how held, 421.

persons applying may be assessed seven days before, 735.

## EMBEZZLING property at fires, punishable as larceny, 206.

ENGINE, FIRE, penalty for injuring, 210. See *Engineers* and *Enginemen*.

ENGINEER, CITY, how chosen, and his duties, 162, 163.

may appoint an assistant, subject, &c., 163.

committee on city engineer's department to be appointed annually, 162.

their powers and duties, 162.

ENGINEERS OF THE FIRE DEPARTMENT.

to prosecute for violation of statute respecting wooden buildings, 91.

to report names of persons burning chimneys, 114.

number, powers, and duties to be prescribed by city council, 204.

to have powers and duties of firewards, 204.

to examine and remove shavings, &c., 204.

to be exempt from military duty, and serving as jurors, or constable, 205.

money may be appropriated for relief of, 205.

shall repair immediately to fires and carry badge of office, 205.

may order buildings to be pulled down, 205, 213, 215.

may command assistance, 205, 213; may suppress tumults, 206.

may direct enginemen, and all other persons, 206.

may require and compel assistance, 206; penalty for disobeying, 206.

to license buildings for roasting cocoa, 207.

fires not to be kindled or carried in streets, &c., without permission of, 207.

to search for combustibles and cause their removal, 215.

penalty on occupant, &c., for not removing, 215.

duty to prosecute for offences, 208.

may license the keeping of fireworks, 209.

may rescind the license, 209.

penalty for selling fireworks without license, 209.

number of, 211; choice of, and of chief engineer, 211.

tenure of office, and holding over, 211.

may be removed by city council, vacancies, pay, 211.

organization of board, 211; election of secretary, 211.

term of office, pay, oath, bond, &c., 211, 212.

meetings of board, quorum, rules and orders, 212.

to be responsible for whole department and its property, 212.

to have superintendence of engines, houses, &c., 212.

to make rules, &c., for the department, subject to approval by aldermen, 212.

for driver and steward of hook and ladder companies, 209.

ENGINEERS OF THE FIRE DEPARTMENT, (*Continued.*)

- secretary of board to act as clerk, 212.
- to keep account of appropriations, expenditures, &c., 212, 213.
- powers and duties of at fires, 213.
- absences from fires to be reported, 213.
- duty of, in case of fires in adjoining towns, 213.
- chief engineer to have command at fires, 213.
- to examine engines, fire apparatus, horses, &c., 214.
- chief engineer to make annual report, 214.
  - report, how to be published, 215.
  - to cause repairs of engines, &c., to be made, 214.
  - to keep rolls of companies, to examine and certify bills, &c., 214.
  - to receive and transmit returns to board of aldermen, 214.
  - to report persons who disobey orders, 215.
  - application for license to sell and store camphene, &c., to be made to,
  - in absence of, next in rank, to act, 215.
- to wear caps, badges, &c., 223.
- to sue for penalty for having loaded fire-arms, 230.
- to seize such loaded fire-arms, 230.
- gunpowder*, to make rules respecting, 216.
- to approve vaults for keeping gunpowder, 231.
- may seize and libel gunpowder, kept contrary to law, 231–239.
- may license the keeping of gunpowder for sale, 232.
- may establish rules and regulations respecting gunpowder, 232.
- to publish the same, 235. See *Gunpowder*.
- may enter and examine stores licensed to keep gunpowder, 234.
- may cause gunpowder to be removed or destroyed in case of fire, 234.
- may obtain search warrant and search for gunpowder, 234.
- may grant vacation to officers and members if, &c., 224.
- ENGINEMEN, to be appointed by the mayor and aldermen, 204.
- number, duties, qualifications, &c., 204, 211, 217, 220, 222, 223.
- exempted from military duty and serving as jurors or constables, 205.
- money may be appropriated for relief of, 205.
- to sign an agreement, 217.
- removals, vacancies, 217, 218, 223.
- compensation, substitutes, 218, 219.

ENGINEMEN, (*Continued.*)

- not to meet in engine houses, except, &c., 218, 222.
- selections of substitutes, 224 ; vacations, 224.
- those serving seven years to receive certificate, &c., 218.

ENGINE, HOSE, AND HOOK AND LADDER COMPANIES.

- number of and how formed, 218, 219.
- members of, how and when paid, 219.
- to consist of what officers and men, 219.
- appointment of foremen and assistant foremen, their powers and duties, 219 220, 221.
- duties of clerks of companies, 221, 222.
  - of enginemen, firemen, and drivers, 220, 221.
  - of hosemen, axemen, and rakemen, 222.
  - of all members of fire department in case of fire, 222.
- engineers may permit one member of company in addition to driver to sleep in hose house, &c., 222.
- cannot appoint or discharge an officer or member, 223.
- not to leave the city, except, &c., 223.
- not to impose fines on members, 223.
- deductions for absence, tardiness, &c., 223.
- absences and tardiness to be cause of discharge, 223, 224.
- vacations may be granted to officers and members, 224.

EXHIBITIONS, public, regulated, 32.

EXPENDITURES, annual statement of, 200. See *Contracts and Expenditures* and *County Receipts and Expenditures*.

FALSE ALARM of fire, penalty for, 207.

FANEUIL HALL, not to be sold or leased by city council, 17, 474.

- history of, 163.
- general meetings of citizens to be held in, 161.
- superintendent of, appointed, 163.
- duties and tenure of office of superintendent, 164.
- vacancy how filled, 164 ; salary, 164.
- hall to be kept in good order, 164 ; to be examined once a month, 164.
- rules and regulations, and price for using, 164, 165.

FANEUIL HALL MARKET, extension of, authorized by legislature, 166.

- extended by mayor and aldermen, 167, *note*.
- city to make no ordinance, &c., prohibiting occupation of street-

FANEUIL HALL MARKET, (*Continued.*)

- stands within the limits, for the sale of certain provisions and produce, 167.
  - nor for the sale thereof within certain hours, 167.
  - superintendent of to be appointed annually, 168.
  - his powers, duties, pay, &c., 168, 169-175.
  - to pay over moneys and make report quarterly, 175.
  - deputy superintendent's appointment, powers, &c., of, 169.
  - limits of the market, 170.
  - stands to be assigned for carts, &c., 170.
  - no person to occupy any stand except that assigned, 170.
  - horses, carriages, vehicles, boxes, packages, &c., may be removed by the superintendent within and from limits, 170, 171.
  - penalty on owner or possessor for neglect or refusal to remove, 171.
  - horses, carriages, &c., not to stand within limits except, &c., 174.
  - street-stands not to be occupied except for certain purposes, and at certain hours, 174, 175.
  - regulations for sale of butter, 171, 172; and of poultry, 173.
  - fraudulent dealing within the limits, how punished, 172.
  - stalls and cellars, how to be leased, 172.
  - not to be underlet, 172.
  - to revert to city when rent is not paid or regulations observed, 173.
  - lessees of not to encumber passage-ways, or avenues, 174.
  - not to permit offal, &c., to remain in stalls, &c., or throw the same into the street, 172.
  - offal, &c., not to be thrown into streets, or passageways, &c., 172.
  - stale meat, vegetables, &c., not to be sold or exposed for sale within the limits of the market, 172, 173.
  - gaming, smoking, and disorderly behavior prohibited within the limits, 173.
  - penalties for violation of the ordinance, 171, 175.
  - repealing clause, saving clause, 175.
- FARE, rates of, for carriages, 101.
- FARM SCHOOL, 55, and *note*, 432, 433, and *note*.
- FEDERAL STREET BRIDGE, 68-71. See *Bridges*.
- FEMALES, separate branch of House of Reformation for, 379.
- FENCES AND FENCE VIEWERS, statute provisions concerning, 176-181.
- FERRIES, ancient and present, 182, 183.

FERRIES, (*Continued.*)

- public, how established, 183.
- Winnisimmet ferry, 183, 184.
- East Boston ferries, 184.
- East Boston Ferry Company, 184-186.
- People's Ferry Company, 186.
- petitions for free ferries and reduced rates of toll, and the action of the city council thereon, 186-190.

FEDERAL STREET BRIDGE, 68, 86. See *Bridges*.

FIDDLERS, common, to be committed to House of Correction, 345.

FIELD DRIVER, statute provisions concerning, 191-194.

- FILTH, not to be placed on common, common lands, or squares, 121.
- not to remain in market, 172.
- not to be thrown into passage-ways or streets in market, 172.
- not to be thrown out, left, or removed, without, &c., 320.
- how removed, 321. See *Health* and *Nuisance*.

FINANCIAL YEAR, to be from May 1, to April 30, 193.

- FINANCE, 195-201; joint committee of, 198; their duties, 198.
- receipts for sales of public lands, to be paid to treasurer, 198.
- See *Accounts*, *Auditor*, *Public Moneys*, and *Treasurer*.
- use, 230-239.

- FINES, under laws respecting gunpowder, how recovered, and to whose under health laws, how to be recovered, 299.
- to whom they shall inure, 299, 427.
- persons committed for non-payment of, 365.
- may be imposed, under by-laws, 424.
- under by-laws, how recovered and appropriated, 425, 426, 427.
- to inure to use of city, except, &c., 427.

FIRE, regulations respecting chimneys, flues, stove-pipes, &c., 112-114.

- fire department, engineers and enginemen, 201-226.
- fire-arms, bonfires, and brick and lime kilns, 227.
- fuel, 228; furnaces for glass, 679.
- gunpowder, 230-237.
- steam engines and furnaces, 679-683.
- not to be carried through, or kindled in, streets, &c., without permission of engineers, 207.
- duties of the police in regard to, 224.
- removal of prisoners, in case of, 355, 356. See *Buildings*, *Engineers*, *Enginemen*, *Fire Alarm Telegraph*, *Fuel*, *Furnaces*, *Gunpowder*, and *Steam Engines*.

- FIRE-ALARM TELEGRAPH, joint committee on and their duties, 225, 226.  
 superintendent of, election, term of office, pay, duties, &c., 225, 226.  
 fire alarms, how given, 226.  
   rules and directions concerning, how made, and altered, and where kept, 226.  
 signal boxes not to be opened for false alarm, 226.  
   nor be injured, defaced, &c., 226.  
 penalty for opening, injuring, &c., 226.  
 penalty for breach of ordinance, 226.
- FIREARMS, not to be discharged, except, &c., 227.  
 loaded, not to be taken into houses, stores, &c., 230.  
 may be seized and forfeited, 230.
- FIRE DEPARTMENT, 201-226.  
 of whom it shall consist, 204, 211.  
 members of, exempt from military duty and serving as jurors or constables, 205.  
 money may be appropriated for relief of, 205.  
 charitable association of, 209, *note*.  
 members of, to be of full age and voters in Boston, 217.  
   to sign an agreement, 217 ; not signing, to have no pay, 217.  
 persons receiving certificate invested with authority, 223.  
 officers or members, how removed, 217.  
   removal of, with reasons, to be recorded, and a copy sent to aldermen, 219, 220.  
 no uniform unless prescribed, 223.  
 to wear such badges, &c., as aldermen direct, 223.  
 no company shall discharge officers or members, 223.  
   nor leave the city, except, 223.  
 no organization of firemen, except, 209, 210, 223.  
 companies not to impose fines, deduction to be made in case, &c., 223.  
 cause of discharge, 223.  
 members entitled to certificate and wear badge, after seven years' service, 218.  
 compensation of, 218, 219.  
 may provide substitute, 218. See *Engineers and Enginemen*.  
 when may have vacation, 224.
- FIREPLACES, regulated, 112-114.  
 under tar-kettles, boilers, and coppers, regulated, 207.

- FIREWARDS, duties of, vested in engineers, 204. See *Engineers*.
- FIREWOOD, not to remain in street longer than, &c., 710.  
not to be sawed on sidewalk, &c., 717.  
regulations respecting sale of, 822-825. See *Wood*.
- FIREWORKS, not to be kept or sold without license, 209.
- FISH, tainted, not to be sold for food, 306.  
burden on defendant to show that it was sold for other purposes, 306.  
how prepared for sale, 321, 322.  
how refuse parts of shall be disposed of, 322.  
not to be sold in certain streets, without, &c., 322.
- FLAGMEN, to be stationed at railway crossings when aldermen require, 495.  
proceedings if corporation refuses, 495.
- FLUE, penalty for setting on fire, 114.
- FOOD, punishment for selling adulterated, 305, 306.
- FOOT-BALL, forbidden in streets, 711.
- FOUNTAINS, to be under care of board of aldermen, 120.
- FOWLING-PIECE, not to be discharged, in city, 227.
- FRAMINGHAM, inhabitants of, may use water for certain purposes, 790.
- FRANKLIN SQUARE, 117. See *Common and Public Squares*.
- FREESTONE, survey of may be regulated, 404.  
surveyors of, how appointed, &c., their duties, fees, &c., 405. See *Marble*.
- FRONT STREET authorized to be extended, 704.
- FRUIT, sale of, by minors, may be restrained, 278.
- FUEL, contracts for to be made by committee, 228.  
committee to advertise, 228; sealed proposals to be sent in, 228.  
contract shall provide for delivery, 228.  
to be weighed or measured before delivery, 228.  
superintendent to attend to delivery and reception, 228.  
chairman of committee to certify bills for, 229.  
provision for, in jails and houses of correction, 357.
- FUNERAL CARS, to be provided by city registrar, 310.  
care of, 310; use of, 310; fees for, 310, 312.
- FUNERALS, regulations respecting, 309-313.
- FURNACES, for glass, to be licensed, 679, 680.  
if unlicensed, may be abated as a nuisance, 681.  
adoption of act respecting, 680, and *note*.  
for melting iron, 679, 680. See *Steam Engines*.  
not to be placed, &c., under sidewalk without license, 721, 722.

FUSIBLE SAFETY-PLUG, to be used with steam boilers, 682, 683.

See *Steam Engines* and *Furnaces*.

GAMING TABLES, not to be exposed in streets, or on the common, 711.

GAS COMPANY authorized to open streets to lay gas pipes, 703.

GENERAL MEETINGS, of citizens, when held and how called, 26, 27.

GEORGE'S ISLAND, 241.

GLASS FURNACES, regulated, 679, 680.

GOATS, not to be kept without license, 322.

not to go at large in streets, 191, 716.

GOODS not to be hung so as to project into street more than one foot, 701, 711, 712.

not to be raised, &c., on outside of any building, except, &c., 702.

GOVERNOR, election of, 24, 150-161; lieutenant, election of, 24, 150-161.

GOVERNOR'S ISLAND, 241.

GRADING of streets, relative heights in plans for, how expressed, 659, *note*.

grade of certain streets and lands, 659, *note*.

GRAIN, measures for, 814, 815.

GRATINGS in streets regulated, 713, 720.

GRAVES, regulations respecting, 302, 309-313.

GREAT BREWSTER, 241, *note*.

GRINDING CUTLERY in streets, forbidden unless licensed, 713.

GUN, not to be discharged in city, 227. See *Firearms*.

GUN COTTON, city may make rules respecting the keeping, &c., of, 208, 238.

search-warrants to be issued for, 238.

penalty for unlawful keeping, 238, 239.

GUNPOWDER, rules respecting, may be made by engineers, 216, 232.

and by city, 238.

firearms loaded with, not to be taken into house, store, &c., 230.

may be seized and forfeited, 230.

not more than 400 pounds to be kept by United States or State officers, 231.

how to be kept, 231; otherwise, may be seized and sold, 231.

not more than one pound to be kept, except as prescribed, 231, 232.

forfeiture, 232; not to be sold without license, 232.

form, and duration of license, 232.

engineers may rescind same, 232; fees for license, 232.

GUNPOWDER, (*Continued.*)

- engineers may establish rules and regulations, 232.
- seizure and libelling of, 233; course of procedure thereon, 233, 234.
- penalty for hindering or rescue, 234; duty of citizens to assist engineers, 234.
- engineers may enter licensed stores, and examine, &c., 234.
- search warrant to search for, 234, 238.
- action for damages for persons injured by, 234.
- rules to be published, 235; recovery of fines, &c., 235.
- indictment need not set forth more of act than is necessary, &c., 235.
- penalty, 235; how fines shall be appropriated, 236.
- proviso, when engineer is a witness, 236.
- libel in police court, when less than 10 qr. casks are seized, 236.
- chief or any engineer may sue for and recover fines, &c., 236.
- general laws respecting, 237, 238.
- how to be packed and marked, 237.
- penalty for falsely marking, 238.
- city may make rules respecting the keeping of, 238.
- search warrants may be issued for, 238.
- penalty for unlawful keeping, 238, 239.
- wilful and malicious explosion of, forbidden, 237; penalty for, 237.
- persons forbidden to throw into or upon any building, 237; penalty, 237.

HACKNEY CARRIAGES, 97-103. See *Carriages*.

HALF-WAY ROCK, 241.

HANCOCK FREE BRIDGE, 84.

HANDCARTS, regulated, 103-106. See *Carriages*.

HANDSLEDS, regulated, 103-106. See *Carriages*.

HARBOR. Limits of for certain purposes, 275.

*Islands.*

- Thompson's Island, annexed to Boston, 54.
- concurrent jurisdiction ceded to United States over certain islands, &c., 241, 242.
- Rainsford Island, provisions respecting, 242, 243.
- no earth or stones to be taken from Bird Island, 243.
- or from any islands, 243, 244.
- this shall not prevent taking of shell-fish, 244.
- fire not to be wilfully built on Spectacle Island, 244.

HARBOR, (*Continued.*)*Harbor Lines.*

- from Free (Federal Street) Bridge to Warren Bridge, 244, 245, 246.
- between South Boston Free (Federal Street) Bridge and old South Boston (Dover Street) Bridge, 247-249.
- channel lines established, and described, 249, 250.
- restrictions as to building and filling, 250; penalty, 250.
- between Warren Bridge, (Boston side,) and Milldam, 250, 251, 255, 256.
- on Charlestown side of harbor, 252, 253.
- on East Boston Side of harbor, 253, 254.
- between West Boston Bridge and Milldam, 255, 256, 262.
- from Boston and Maine Railroad Company's island to Canal Bridge, 256.
- from Canal Bridge to Milldam, 256.
- parallel to Milldam to northern shore of Charles River, 256.
- in Miller's River, 256.
- along Charlestown Branch Railroad Company's sea wall, 256.
- from Charles River to Miller's River, 256, 257.
- to point on Prison Point bridge, 257.
- to point opposite end of Fitchburg Railroad bridge, 257.
- to Boston and Lowell Railroad bridge, 257; in South Bay, 257.
- from Miller & Nason's Wharf, across South Bridge, 257.
- to Roxbury Creek, 257; in Chelsea Creek, 258.
- on East Boston side of same, 259, 260; on Chelsea side, 260, 261.
- no wharf or pier to be extended beyond, &c., 246, 247, 249, 250, 255, 258, 262, 263, 265.
- no wharf, &c., to be erected, &c., in any other part of harbor, 246.
- penalty, 246, 247, 250, 255, 258, 262, 263, 265.
- erection may be abated as a nuisance, 247, 250, 255, 258, 262, 265.
- reported by commissioners, 257.
- proprietors between West Boston Bridge and Milldam authorized to extend wharves to, 263.
- on condition that sea wall is built, 263.
- additional lines in South Bay, 263-265.
- in Mystic River, 265, 266.
- in Dorchester Bay and Neponset River, 267.
- from East Boston, towards Breed's Island, 268, 269.
- flats between West Boston Bridge and the Milldam, 269.

**HARBOR.** *Harbor Lines, (Continued.)*

between Taylor's wharf and city's jail wharf, 270.

near tenth line in South Bay, 271.

*Harbor regulations*; where vessels shall anchor, 271, 272.

trim of vessels at wharves, 272.

no stones, gravel, &c., to be thrown into harbor, 272, 274.

regulation of warps and lines, 272, 273.

ashes, cinders, &c., not to be thrown into harbor, 272.

master and owners of vessel liable, 272, 274.

vessels to keep anchor watch, and light, 274; penalties, 272, 276.

stones, gravel, and sand not to be carried from islands, 274, 275.

limits of harbor, for certain purposes, 275.

concurrent criminal jurisdiction in harbor, 275.

mooring to buoys, beacons, &c., prohibited, 275.

and to private bridge, wharf, &c., 276.

penalty for wilful destruction of buoys, &c., 275, 276.

rafts not to be fastened to any public bridge, &c., 276.

*Harbor Master*, to notify of provisions of law, 272.

to decide as to warps and lines, 273.

appointment, 276, 273; to give bond, 273.

may appoint deputy, 273; compensation, 273.

to enforce laws and prosecute offences, 273; to regulate anchorage, 273, 274.

penalty for obstructing or disobeying, 274.

to report vessels having hides, &c., to city physician, 315.

master of such vessel to report to, 315.

*Committee on Harbor*, how appointed, 277; powers and duties of, 277.

expenses incurred by committee on, not to exceed appropriation, 277.

**HAWKERS AND PEDLERS.**

what articles they may sell without license, 278.

city council may regulate such sales by minors, 278.

what articles they may not sell without license, 278.

penalty for selling without license, 278.

licenses, how and to whom granted, 278-280.

form and effect of license, fees, 279, 280.

who may be licensed without fee, 279.

state and county licenses, 279, 280.

record of licenses, and of transfers, 280.

**HAWKERS AND PEDLERS, (*Continued.*)**

- receipts from licenses, how appropriated, 280.
- transfer of licenses, 280, 281.
- person licensed, to post his name and number, &c., 281.
- licenses when not to protect, 281; when void, 281.
- penalty for forging license, 281; for selling without license, 281.
- those licensed as auctioneers not to sell except in place where license was obtained, 281, 282.

**HAY AND HAY-SCALES, superintendents of scales and weighers of hay to be appointed, 282, 283, 285.**

- they shall conform to rules of city council, 283.
- how removed, 283; vacancies, how filled, 283.
- time when they shall attend, 285.
- accounts and certificates, form of, 285; fees for weighing, 285, 286.
- no fees for weighing on account of the city, 286; compensation of, 286.
- penalty for setting up hay-scales without authority, 283.
- hay pressed shall be branded, 283.
- forfeiture of hay offered for sale without such brand, 283.
- how forfeitures shall be recovered, 283.
- inspectors of bale or bundle hay, how appointed, 283.
  - oath, removal, vacancy, 283.
  - to inspect and weigh all bale or bundle hay, 283.
  - to furnish themselves with scales and weights, 284.
  - fees of, 284.
- how inspected hay shall be branded, 283, 284.
- penalty for selling bale or bundle hay without inspection, 284.
- inspection, how may be waived, 284.
- stands for sale of hay and straw, to be appointed 284.
- penalty for standing in other place for sale, &c., 284.
- public sales to be established, 285; decimal weights, 285.
- trying and sealing hay scales, 813; fees for same, 813.
- penalty for using hay scales, &c., not sealed, 814.

**HEALTH, provisions of city charter respecting, 17.**

- statutes concerning, 290-306.
- ordinance concerning, 306-323.
- mayor to be vigilant in protecting, and to enforce laws, 307.
- Board of Health*, how constituted, 17, 290, 306.
- appointment and pay of physician, 290.
- fees and charges of persons employed by, 290.

**HEALTH.** *Board of Health, (Continued.)*

- to make regulations respecting nuisances, sources of filth, sickness, and contagion, and give notice thereof, 290.
- to examine into and abate nuisances, &c., 291.
- proceedings in such cases, 291, 292.
- to notify occupants of unfit dwelling-places, to put same in order or quit, 291, 292.
- may make compulsory examination of land, buildings, or vessels, when, &c., 292.
- may permit removal of infected articles, persons, &c., 293, 294.
- shall make provision for infected persons, 293, 294.
- may prevent suspected travellers from travelling without license, 293.
- houses and stores may be taken, 294.
- expenses of transporting and purifying infected articles, how paid, 294; removal of prisoners attacked with contagious disease, 295.
- provisions in regard to vaccination, 295, 296.
- to quarantine, 296, 297.
- to hospitals and dangerous diseases, 297-299.
- to offensive trades, 299, 300.
- to dead bodies, required to be buried at public expense, 301, 302.
- to burial-places and interments, 302, 304.
- wilful injury of tombs, gravestones, cemeteries, &c., how punished, 303, 304.
- making roads, canals, &c., through burial-places, when and how punished, 304.
- sale, &c., of diseased, corrupted, or unwholesome provision, when and how punished, 304, 305.
- of damaged or tainted fish, 306.
- killing for sale, or selling meat of, too young calves, 305.
- fraudulent adulteration of food, liquors, drugs, &c., 305.
- wilfully corrupting springs, injuring aqueducts, &c., 305.
- selling poisons without written prescription, 305, 306.
- purchasing deadly poisons, or giving false, &c., name to physicians, 306.
- Superintendent of Health*, election, term of office, vacancy, pay, 307; bond, 308.
- appointment of assistant, pay, &c., 307.
- duties of superintendent and assistant, 307-309.
- to make report to city council, 308.

**HEALTH.** *Superintendent of Health, (Continued.)*

to report to auditor estimates for his department, 303.

to have charge of city teams, clean streets, &c., 309.

duty as to bills for work and materials, and pay rolls for laborers, 309. See *Superintendent of Health*.

*City Registrar* to superintend the department relative to the interment of the dead, 309–313.

to have care of burying-grounds, license burials, 310.

to provide funeral cars, &c., 310, 311. See *City Registrar*.

*Funeral Undertakers*, appointment, 310, 311; fees, 312.

graves not to be dug, nor dead bodies removed or disturbed without license, 311.

*City Physician*, election, term of office, vacancy, pay, 313.

to examine into nuisances, causes of sickness, &c., and have them destroyed, 313, 314.

to vaccinate inhabitants of Boston without charge, 314.

to keep and supply vaccine virus, 314.

to attend at jail and police stations, 314.

to keep record of cases of small-pox, 314, 315.

other duties of, 314, 315.

suitable office to be provided for, 314.

harbor master to report arrival of vessel with hides to, 315.

*Consulting Physicians* to be elected, and their duties, 313.

*Port Physician*, election, term of office, vacancy, pay, 315.

to reside at Deer Island and superintend quarantine hospital, 315.

to keep record of small-pox cases, &c., 316.

*Vaults, Drains, and Privies*, suitable to be furnished each tenement, 316.

vaults and privies, how constructed, 316.

may be connected with common sewers, 316.

proceedings when suitable vaults, &c., are not constructed, 317.

offensive, to be repaired and cleansed, 317.

regulations as to cleansing, 318; fees, 318.

waste water to be carried off in drains, 319.

persons may be removed from buildings too thickly inhabited, or not furnished with vaults, 319.

*House Offal, Ashes, Filth, &c.*, how to be kept, 319.

to be carried away by city scavengers twice a week, 319; mode of removal, 319, 320.

not to be thrown into streets, 320; penalty, 320.

**HEALTH.** *House Offal, Ashes, &c., (Continued.)*

may be removed by order of board of aldermen, 321.

sale and keeping of fish regulated, 321.

to be first cleansed, &c., 321, 322.

not to be sold in certain streets, except, &c., 322.

vegetables to be divested of parts not used for food, 322.

swine and goats not to be kept without a license, 322.

damaged grain, meal, vegetables, meat, or fish, not to be landed without permit, 323.

horses and carriages not to be washed in streets, 322.

manure not to accumulate in stables, 323.

nor be removed except at certain hours, 323.

penalties for violating health ordinance, 323.

**HIDES**, vessels containing, to be reported, 315.

**HIGHWAYS.** See *Streets*.

**HISTORIES**, cities and towns may appropriate money for, 323.

**HOGS**, not to be kept without license, 323.

nor to go at large, 121, 716.

**HOOK AND LADDER MEN**, 211, 218-222.

See *Enginemen* and *Fire Department*.

**HOOPS AND STAVES**, cullers of, when and how chosen, 678.

See *Staves* and *Hoops*.

**HORNS**, not to be blown in streets, to give notice of business, unless, &c., 713.

**HORSES**, harnessed to carriages, not to go faster than seven miles an hour, 107.

not to be ridden or driven on common or squares, except, &c., 120, 121.

not allowed to go at large, 121, 529.

not to be washed in streets, 322; not to be fed in streets, 109, 716.

not to be ridden or driven faster than six miles an hour, 716.

See *Carriages* and *Faneuil Hall Market*.

**HOSEMEN**, 211, 219, 222. See *Enginemen* and *Fire Department*.

**HOSPITAL**, may be established for infectious diseases, 297; regulation of same, 297, 298.

at Deer Island to be under superintendence of port physician, 315.

may be established for relief of poor persons, during temporary sickness, 324.

See *City Hospital*, *Health*, *Lunatic Hospital*, and *Rainsford Island*.

## HOUSE OF CORRECTION AND JAIL, not to be erected or maintained

in any other city, &c., unless, &c., 340.

aldermen to provide at expense of Boston, 340, 341.

yards, workshops, and other accommodations, 341, 342.

who may be confined therein, 341.

persons convicted under the fugitive slave law may not, 341.

when jail may be used as house of correction, 342.

removal of convicts from one house to another, 342, 369.

county commissioners, &c., to assent thereto, 342, 369.

classification of prisoners, 342, 351, 355.

prisoners desiring to read, to have suitable cells and light, 342, 343.

overseers of, their appointment, pay, &c., 343.

materials for work in, rules for government of, &c., 343.

accounts of cost of materials and of labor, 343.

*Board of Directors*, to have the custody, rule, and charge of, 347.

to see that rules, &c., are enforced, 343.

to keep register of their official proceedings, 343.

to examine accounts of earnings and expenses, 343.

may make contracts for work to be done, 343.

stipulations of contract, 343.

may let convicts out to hire, 344.

may employ convicts on public lands and buildings, 344.

to remove officers using intoxicating liquors as a beverage, 355.

*Master* of, how appointed, 133, 348; tenure of office, 348; pay, 348, 349.

to keep calendar of prisoners, 349; contents of calendar, 349.

penalty for neglect, 349.

to keep record of conduct, 349, 350.

such record to be regarded in petitions for pardon, 350.

to keep account of money of prisoners, 350.

to file all warrants and official papers, 350.

to whitewash and keep clean the house, 350, 351.

to see to the cleanliness of the prisoners and their food, 351.

how to execute sentence of solitary imprisonment, 351, 352.

to keep convicts at hard labor, but not in engraving or printing, 352.

log and chain may be used when, &c., 352.

to provide moral and religious instruction to prisoners, 353.

to furnish instruction in reading and writing, 353, 354.

HOUSE OF CORRECTION AND JAIL, (*Continued.*)

*Master* of, not to give, &c., spirituous liquors, &c., 354.

penalty for so giving, &c., 354.

to keep account of earnings and expenses, 356, 357.

to supply fuel, bedding, clothing, &c., 357.

to furnish specific rations, when ordered, 357.

penalty for neglect, 357.

to keep a prison book, 359; contents thereof, 359.

penalty for neglect, and how recovered, 359.

to make returns to inspectors twice a year, 359, 360.

duty of, as to insane prisoners, 367.

females, where to serve sentence at hard labor, 344.

female, with nursing infant, to go to House of Industry, &c., 344.

amount to be paid by county for her support, 344.

pregnant females may be transferred, &c., 344.

cost of their support, 344.

female convicts may have custody of their children, under a certain age, 344.

how such children may be removed from the House of Correction, 345.

rogues, vagabonds, idlers, common railers, &c., to be committed to, 345.

may be fined and sentenced conditionally, 345.

discharge of prisoners supposed to be reformed, 346.

mode of discharge, 346.

sentence of such persons convicted after discharge, 346.

night-walkers convicted the third time, how sentenced, 347.

how may be bound out or discharged, 347.

calendar of prisoners to be kept, 349.

record of conduct to be kept, 349, 350.

to be considered in applications for pardon, 350.

official papers or copies to be filed, &c., 350.

house and prisoners to be kept clean, food, 350, 351.

sentence of solitary imprisonment, how executed, 351, 352.

prisoners to be kept at hard labor, 352.

but not at engraving or printing, 352.

log and chain may be used, 352.

punishment of refractory prisoners, 352; of those refusing to work,

352; of those escaping, 352; of poor debtors who commit dep-

redations, 353.

HOUSE OF CORRECTION AND JAIL, (*Continued.*)

- moral and religious instruction of prisoners, 353.
- instruction in reading and writing, 342, 343, 353, 354.
- burial of deceased prisoners, 354.
- spirits and strong drinks prohibited, 354.
  - penalty for furnishing, &c., 354.
  - officers, using as a beverage, to be removed, 355.
- removal of prisoners, in case of pestilence or fire, 355, 356.
- expense of supporting prisoners, how borne and audited, 356, 357, 358.
  - how recovered of those obliged to pay, 358.
- money may be advanced for tools, materials, &c., 356.
- specific rations, when and how furnished, 357.
- support of poor convicts, how recovered, 358.
  - notice to town, &c., liable therefor, 358.
- prison books to be kept, 359; penalty, 359.
- Inspectors of Prisons*, who to be, their powers and duties, 359-361.
- returns to the governor, what to state, and how made, 361-364.
- commitments and discharges, 364-367.
- conditional sentences, of fine or imprisonment, 364, 365.
- certificate of inability to pay fine, 365.
- discharge of poor convicts, 365, 366.
  - fees of justices for discharging, 366, *note*.
- convicts, too sick to be removed, 367.
- insane persons, how treated, and removed, 367.
  - when to be returned, 367.

HOUSE OF INDUSTRY, where located, 373, *note*.

- who may be committed to, 345, 346, 347, 373, 374.
- to be managed by board of directors, 368, 369, 375.
- rules and orders for managing to be approved by city council, 374.
- removal of prisoners from, and transfer to, 369.
- when police court may commit to, 374.
- if inmates die, notice to be given, &c., 301, 375, *note*.
- powers and duties of directors as to binding out children, 373, 432, *note*, 453-457.
  - as to paupers, 373, *note*, 436-440.
  - as to children leading a dissolute life, 377, 379.
- expenses of support of paupers, how recovered, 375, *note*, 436-440.
- See *Overseers of the Poor* and *Paupers*.

HOUSE OF REFORMATION, city council authorized to erect a building for, 376.

to be managed by board of directors, &c., 368, 369, 376, 380.

superior court and police court may sentence children convicted to, 377.

notice to be given to directors, &c., 377.

children leading dissolute life may be sent to, 377.

right of appeal, 379, 380.

how long to be kept, 377, 379.

may be employed and instructed, 378.

may be bound out, 378.

how may be discharged, 378.

already in House of Correction, may be transferred to, 379.

separate branch for females may be established, 379, 381.

united with Boylston Asylum, 380.

by what name to be called, 380.

history of 380, *note*.

truant children may be sent to, 381, *note*, 770, 771.

HOUSE OFFAL, 319-323.

HOUSES. See *Buildings*.

HOWITZER, 230. See *Firearms*.

HYDRANTS, penalty for injuring, 790; for opening, 798.

to be provided in Roxbury and Brookline, 793.

HYGIENE, to be taught in schools, 633.

ICE, on sidewalks, to be made safe, 719.

when thrown into streets, to be broken up, &c., 719.

IDIOTS, 444, 452. See *Lunatics*.

IDLE PERSONS, to be committed to House of Correction, 345.

children may be sent to House of Reformation, 377, 379.

IMPOUNDING, of cattle and horses going at large, 191-194.

INCUMBRANCES. See *Harbor, Streets, and Wharves*.

INDEPENDENCE SQUARE, 117.

INDUSTRY, HOUSE OF, 301, 345, 373, 436. See *House of Industry*.

INFECTIOUS DISEASES.

board of health to provide for persons infected, 293.

to provide against infected articles, 290.

persons may be stationed on borders of state, to prevent, &c., 293.

warrants may be granted to remove persons infected, 294.

to secure infected baggage, &c., 294.

INFECTIOUS DISEASES, (*Continued.*)

- houses, &c., may be impressed for safe-keeping of same, 294.
- houses, &c., may be broken open, 294.
- expenses, how paid, 294; town to make compensation, 294.
- removal of prisoners, attacked in jail, &c., 295, 355.
- vessels suspected of, to be ordered to quarantine, 297.
- hospitals may be provided, 297; sick to be removed to, 298.
- sick who cannot be removed, to be provided for, 298.
- care to be taken to prevent spread of, 298.
- householders to give notice, 298; physicians to give notice, 298.
- duties of consulting physicians, in case of, 313.
- record to be kept of, and report made, 314, 315.
- duties of trustees of City Hospital, in regard to, 327.

INJUNCTIONS, may be issued against nuisances, 292; steam-engines and furnaces, 681; railroads, 489, 490, 501.

INNS AND INNOLDERS, 398-400. See *Licensed Houses*.

INOCULATION, 295, 296, 314. See *Health and Vaccination*.

INSANE PERSONS, 330-336; confined in House of Correction, 367.

INSPECTORS OF ELECTIONS, five to be chosen, 4.

- to be residents of the ward, 4.
- with warden, to receive, sort, count, and declare votes, 6, 154, 159.
- to certify record of votes, 6, 9, 154.
- to sign certificate of election of common councilmen, 4.
- to use voting lists, 24.
- to indorse envelopes containing ballots, 157.
- challenged vote to be indorsed, 159.

INSPECTORS OF HAY, 283-286. See *Hay*.

INSPECTORS OF LIME, when and how chosen, 401.

INSPECTORS OF PRISONS, who shall be, 133, 359.

- returns to be made to, 359; duties of, 360; to make reports, 360.
- powers to examine, 360; to give notice of violations of law, 361.
- to transmit copies of such information to the Governor, 361.
- to return a statement of expense of moral and religious instruction, 361.
- to be inspectors of Boston Lunatic Hospital, 330.

INSPECTORS OF SOLE LEATHER.

- their appointment and duties, 392. See *Leather*.

INSTRUCTION, to be furnished to prisoners, 342, 353.

INSTRUCTORS, 635, 636, 642, 644, 648, 649. See *School Instructors*.

- INTELLIGENCE OFFICES, not to be kept without license, 381, 382.  
licenses for, how granted, and revoked, 382; fees, 382.
- INTEREST, authorized upon accounts of city with banks, 195.  
may be charged on taxes, 743. See *Finance* and *Water*.
- INTERMENT OF THE DEAD, to be regulated by board of health,  
302, 309.  
dead bodies not to be dug up, &c., without, &c., 311.  
city may establish cemetery, 411.  
regulations respecting, by ordinance of city, 412-418. See *Health*,  
*Mount Hope Cemetery*.
- IRON not to be placed on sidewalk, 718.
- ISLANDS, concurrent jurisdiction ceded to U. S. over certain, 241.  
provisions respecting Rainsford Island, 242; Bird Island, 243.  
no earth, gravel, stone, &c., to be taken from, 243.  
taking of shell-fish not forbidden thereby, 244.  
fire not to be built on Spectacle Island, without, &c., 244.  
in the harbor, included in ward Number Two, 773.
- JAIL, board of aldermen to furnish, 339, 340.  
for what purposes may be used, 340, 341.  
when may be used as a house of correction, 343.  
not to be used for persons accused or convicted under fugitive slave  
law, 340.  
persons confined in when not to be required to labor, 340, 341.  
if jail is insufficient and prisoner escapes, county to reimburse  
sheriff, 341.  
list of prisoners in to be returned into court, 341.  
penalty on jailer for neglect, 341.  
sheriff to have custody of, 347, 348.  
jailer to appoint assistants, &c., 347, 348.  
compensation of sheriff for care of prisoners, &c., 348, 349.  
how to be determined, 348.  
pay of jailer, assistants, &c., 348, 349.  
calendar of prisoners to be kept, 349.  
penalty for neglect, 349.  
record of conduct of prisoners, 349, 350.  
account of money of prisoners to be kept, &c., 350.  
official papers to be filed, 350.  
cleanliness of jail and prisoners and their food, 350, 351.  
classification, &c., of prisoners, 351.

JAIL, (*Continued.*)

- execution of sentence upon, 351, 352.
- punishment of prisoners refusing to work, or escaping, or being refractory, 352, 353.
- of poor debtors committing depredations, 353.
- instruction to prisoners, 353, 354.
- burial of deceased prisoners, 354.
- spirits and strong drink prohibited unless, &c., 354.
- officers using intoxicating liquor to be removed, 355.
- removal of prisoners in case of pestilence or fire, 355.
- expense of supporting prisoners, &c., 356-358.
- prison-book to be kept; contents thereof, 359.
- returns of to the governor, 361, 362.
- commitments and discharges, 364-367.
- lunatics in, 367. See *House of Correction*.

## JUDGE OF PROBATE, to be a member of board of accounts, 37.

- appointment, salary, &c., of, 130.
- to be one of the inspectors of prisons, 359.

## JUGGLERS, to be committed to the House of Correction, 345.

JUNK, regulations respecting dealers in, 651, 652. See *Second Hand Articles*.

## JURISDICTION, concurrent, of United States, in certain places, 241, 242.

- of counties of Suffolk and Middlesex, of certain offences, 127, 128.
- of police court, 141.

## JURORS, who liable to be drawn and serve as, 384.

- who exempted from serving as, 384.
- no one to serve oftener than once in three years, 384, 385.
- in police courts and before justices of the peace, 385.
- not disqualified, because inhabitants of Boston, in suits in which the city is interested, 31, 388.

*Jury List and Box*, how prepared and whom to include, 385, 388.

- list to be posted up, may be altered, &c., 385.
- names thereon to be put in box, 385.
- what names to be withdrawn, 385.

*Venires* for jurors, clerk to issue, 386.

- how served, additional venires, 386.

*Drawing and Summoning* jurors, how done, 386, 387.*Grand Jurors*, when and how drawn, 388.

- deficiencies in number of, how supplied, 389.

JURORS, (*Continued.*)

- finer on jurors neglecting to attend, &c., 389.
- on officers, &c., for neglect in summoning, &c., 389.
- punishment of fraud in drawing jurors, 389.
- juries in cases of highways, 390.
- special juries of coroners, &c., 389, 390.

## JUSTICE OF THE PEACE, powers and duties in cases of infectious diseases, 293, 294.

- duties of, as to suppressing riots, 626, 627.

## KETTLES AND BOILERS, regulated, 207.

## KILNS, to be licensed, 227.

## KINE, not to go at large in streets, 716.

## LAMPS, lighted, forbidden in ropewalk, barn, or stable, unless, &amp;c., 208.

- may be set up in streets, &c., by board of aldermen, 390.

- rules and regulations for, 391.

- penalties for injuring or destroying, 391.

## LAND AND FLATS west of Charles Street, not to be sold, leased, &amp;c., 481, 482.

- nor lands connected with public institutions in South Boston, 482.

- nor other lands purchased and held for specific purposes, 482. See

*Public Lands.*

LANDAU, 97. See *Carriages.*

## LAND COMMISSIONERS, how constituted and appointed, 480, 481.

- powers and duties of, 481.

LANES. See *Streets.*

## LANTERN, not to project into streets, &amp;c., 712.

## LARCENY, embezzling of property, at fires, declared to be, 206.

## LEASES, to be executed by mayor, 143, 474, 482.

- schedules of, to be laid before city council, 200.

- to be made by committee on public buildings, &c., 474.

## LEATHER, deputy inspectors to be appointed and to give bond, 392.

- measurers of upper leather to be appointed, 392.

- to attend to measuring and sealing upper leather, 392.

- to procure measures and seals, 392.

- penalty for counterfeiting, &c., marks of, 392; fees of, and how paid, 392.

## LEWD, WANTON, AND LASCIVIOUS PERSONS, to be sent to the House of Correction, 345.

**LIBRARY, Public,** may be established by city, 395.

history of the, 393, 394.

city council may make rules respecting, 395.

acceptance of act respecting, 395, *note*.

appropriations for, how made, 395.

city may receive bequests and donations for, 395.

city of Boston may found and maintain, 395.

trustees of, how chosen and organized, 396.

may make their own rules and regulations, 396.

to have care of library and control of expenditures, 396.

to report annually to city council, 396.

to adopt measures to extend the benefits of, 397.

may appoint assistants and subordinate officers, fix their pay and remove them, 397.

amount paid not to exceed appropriation, 397.

city council may remove every person so appointed, 397.

committee to examine, 397; money on account of, how paid, 397.

donations, how acknowledged, 397.

superintendent of public buildings, to report as to repairs or alterations, 397.

superintendent and librarian, how nominated and confirmed, 397.

their residence, tenure of office and compensation, 397.

#### **LICENSED HOUSES.**

board of aldermen may license innholders and common victuallers, 398, 400.

license to specify what and when to expire, 398, 399.

penalty for presuming to be innholder or common victualler without a license, 398.

innholders to entertain travellers, &c., 399.

penalty for refusing, 399.

not to give certain credits, 400.

to put up signs, 399.

common victuallers, rights and duties of, 399.

penalty for neglect of, 399, 400.

buildings of may be entered by officers to enforce the laws, 400.

**LICENSES,** for amusements, theatrical exhibitions, &c., 32.

for auctioneers, 35; for billiard tables and bowling-alleys, 62-65.

for selling and storing camphene and burning-fluid, 94.

for carriages, omnibuses, trucks, &c., 98-103.

for chimney sweepers, 113; for common criers, 142.

**LICENSES, (*Continued.*)**

- for dogs, 144-146 ; for fireworks, brickkilns, &c., 209, 227.
- for glass furnaces, 680 ; for selling gunpowder, 232.
- for hawkers and pedlers, 278-281 ; for intelligence offices, 381.
  - what officers authorized to demand exhibition of, 281.
- for burials, opening graves, &c., 310.
- for innholders and common victuallers, 398 ; for porters, 471.
- for dealers in junk, and second-hand articles, 650-652.
- to enter drains into common sewers, 661.
- for steam-engines and furnaces, 679.
- for selling goods in street, 713.
- for privileges in streets or sidewalks, 713-715.
- where thing is forbidden to be done without license, it may be licensed, 720.

**LIEN, assessments for sewers to constitute, 655.**

- taxes assessed to be, for two years, 752.

**LIGHT-HOUSE ISLAND, 241.****LIGHTERS, provisions respecting weighing of, 38-46. See *Boats and Lighters.*****LIGHTS, to be put up in streets, when aqueduct or drain is repaired, 662, 709.**

- when part of street is allotted for building, 709.

**LIME AND LIME-CASKS.**

- inspectors of lime may be chosen, &c., 401.
  - fees for inspection and branding, 401.
- casks of lime, how branded, 401.
- quality of lime and casks, 401.
- description of casks for Maine lime, 401, 402.
  - penalty for selling in other casks, 402.
- forfeiture of lime, if sold, &c., contrary to law, 402.
- penalty for shifting contents of casks, 402.

**LIMEKILNS to be licensed, 227.****LIQUORS, spirituous, &c., punishment for selling adulterated, 305.**

- prohibited in jails, houses of correction, &c., 354.

**LISTS. See *Voting Lists.*****LIVERY STABLES, not to be erected within 170 feet of any church, 88, 89.**

- keepers of, not to wash carriages or horses in streets, 322.
- not to allow manure to accumulate, 323. See *Stables.*

**LONG ISLAND HEAD, 241.**

LONG POND. See *Water*.

LOVELL'S ISLAND, 241.

LOWELL SQUARE, 117.

LUMBER, Surveyor-general of, for Suffolk and vicinity, appointment,  
bond, residence, office, 403.

tenure of office, duties, &c., 403, 404.

appointment of deputies, their residence, &c., 403.

deputy for surveyor of timber for ship-building, 403.

of ornamental wood and lumber, 403.

surveyor-general and deputy not to deal in lumber, &c., 403, 404.

applications for surveys, to whom made, 404.

surveys and measurements, how made, 404.

LUNATIC HOSPITAL, city council to erect, &c., a hospital for luna-  
tics, 329, *note*, 330.

ordinances to be passed respecting same, 330.

inspectors of prisons to be inspectors of hospital, 330.

amount to be allowed for support of, 330.

provisions for committing to and discharging from hospital, 331,  
332, 450.

fees and compensation in such cases, 331, 333.

who shall be confined in hospital, 331.

Boston police court may commit to hospital, 331.

appeal to superior court, 331; trial of sanity by jury, 332.

notice of application for commitment to be given to mayor, 332.

further notice may be ordered, 332.

mayor and aldermen may discharge from hospital, 332.

may provide for custody elsewhere, 332, 333.

reimbursement of expenses, 333.

removal of, from state lunatic hospitals, 331, *note*, 335, 449.

remedies for recovering expenses, 335, 453.

towns committing to state lunatic hospital, to pay expenses of sup-  
port, 450, 451.

may recover of town where lunatic has legal settlement, 451.

presence of, in court, may be dispensed with in certain cases, 450.

*Board of Visitors*, duties of, to be discharged by board of directors  
of public institutions, 333, *note*, 367-372.

*Superintendent*, to be elected by board of directors of public institu-  
tions, 371.

when chosen, 371; tenure of office, and salary, 371.

to have control and charge, &c., under direction of board of  
directors, 371.

LUNATICS, 449. See *Lunatic Hospital, Paupers.*

LYNN AND BOSTON HORSE RAILROAD, incorporated, 555.

may build road to connect with other roads, 555.

may enter upon tracks of certain roads, 555.

compensation for use, how determined in case of dispute, 555.

rates of fare, not to exceed and how determined, 555, 556.

road and extension, how to be constructed, 556.

alterations of grades of streets, how made, 556.

penalties on persons and corporation for obstructions, 556.

may use tracks of Winnisimmet and other railroads, 556.

conditions of use to be determined by aldermen, 556.

compensation in case of dispute, how determined, 556.

may lease its road and franchise, 557.

location, conditions, 557.

MALIGNANT DISEASES, record to be kept of, 314, 315.

MANURE, not to accumulate, in stables, &c., 323.

MARBLE, survey of, may be regulated, 404.

surveyors of, how appointed, 405 ; term of office, sworn, &c., 405.

duties of surveyors, 405 ; fees, 405.

certificate to be given to owner, 405.

not to be sold unless measured, 405 ; penalty, 405.

MARKET, land at South Boston to be set aside for, 53.

Faneuil Hall, 166-175. See *Faneuil Hall Market.*

MARRIAGES, registry of, 621-625. See *Registry.*

MASKED BALLS, forbidden under penalty, 32, 33.

MASTERS AND APPRENTICES, 453-457. See *Apprentices.*

MASTERS OF VESSELS. See *Health, Quarantine, and Vessels.*

MAVERICK SQUARE, 117.

MAYOR, with aldermen and common council, to have government of city, 3 ; when to enter upon office, 4.

election of mayor, 6 ; to be an inhabitant of the city, 6.

case of no choice of, 7, 8.

of decease, inability, or absence of, 12, 21.

of no choice before commencement of municipal year, 7.

of absence of mayor elect, 12.

when and how to be sworn, 12 ; to administer oath to aldermen and members of the common council, 12.

if present, to preside at meetings of the board of aldermen, but without a vote, 13, 14.

MAYOR, (*Continued.*)

- may appoint city clerk *pro tempore*, 14.
- not at same time to hold any office of emolument, 18.
- to be chief executive officer, 18 ; salary, 19 ; veto power, 19.
- his powers and duties, 19-21.
- to nominate, where appointments are made by mayor and aldermen, 20 ; acts of aldermen to be presented to for approval, 20.
- to be one of school committee, and when present to preside, 22, 648.
- if present, to preside at public meetings of citizens, 27.
- may authorize certain uses of the common, public squares, &c., 120, 121.
- may appoint constables, 122 ; and remove them, 124.
- may grant licenses to common criers, 142.
- to execute deeds, leases, &c., for the city, 143, 476, 477, 482, 795.
- may discharge and assign mortgages, &c., 144, 483.
- to issue notice to owner of dog that disturbs the quiet of any person, 148.
- to appoint a superintendent of Faneuil Hall and Market, 163, 169.
- to draw for moneys to be paid out of the treasury, 197.
- to compare expenditures with appropriations, 197.
- to be member of committee of finance, 198.
- to be member of committee on city debt, 198.
- may direct debts due the city to be put in suit, 199, 309, 708.
- may appoint and remove officers and members of fire department, 217, 219, 220, 224.
- certificate of, as to residence and character of hawkers and peddlers, 278, 279.
- may appoint superintendent of hay-scales, &c., 284.
- weighers and inspectors of hay, 282.
- to protect public health and enforce all laws and ordinances concerning the same, 307.
- may appoint funeral undertakers, 310, 311.
- special permit for tolling bell at funerals, may be given by, 311.
- may call upon city physician for services, 313, 314.
- port physician for services, 315.
- notice of applications for commitment of lunatics to be given to, 332.
- may apply to have idle children sent to House of Reformation, 377, 379.
- penalty upon for fraud in drawing jurors, 389.

**MAYOR, (*Continued.*)**

- may appoint measurers of upper leather, 392.
- placard not to be posted on public building, without consent of, 418.
- duty of as to appointments of certain officers, 421.
- to be one of board of auditors of accounts of overseers of poor, 433.
- to be exempt from duty of watch and ward, 464.
- duty as to appointments of police officers, 468, 469.
- to approve of disposition of public lands, 481.
- duties of, as to suppressing riots, 626-630.
- may examine second-hand articles and shops, 652.
- to swear to report to state auditor as respects state aid, 669.
- to countersign water scrip, &c., 787.
- with treasurer and auditor to be trustees of water fund, 788.
- may appoint persons to make complaints respecting truants, 646, 769.
- may appoint sealers of weights and measures, 817.
- measurers of wood and bark, 825.

**MEAL**, how to be sold, measurement, &c., of, 406. See *Grain*.

**MEASURERS OF UPPER LEATHER**, 392. See *Leather*.

**MEASURERS OF WOOD AND BARK**, 825. See *Wood*.

**MEASURES**, 809-818. See *Weights and Measures*, and *Charcoal*.

**MEDICINES**, adulterated, not to be sold, 305.

**MESSENGER** to city council, how chosen, 408.

his duties, 408; to appoint an assistant, 403; compensation, 408.

**METROPOLITAN RAILROAD (HORSE)**, acts incorporating, 558-563.

location, tracks to be laid as aldermen direct, 558, 559.

what to be deemed locations of road, 559.

notice to be given to abutters before locating, 559.

how to be given, 562.

rates of compensation for carrying passengers, &c., 559.

horse power only to be used for operating, 559.

aldermen may regulate speed and mode of use of track, 559.

to keep streets in repair, and to be liable for damages from defects, &c., 559, 560.

penalty upon corporation for obstructing streets, &c., 560.

penalty for obstructing tracks, &c., of corporation, 560.

capital stock, amount, shares, 560, 563.

when to be paid in, 561, 562.

METROPOLITAN RAILROAD (HORSE), (*Continued.*)

- capital stock, increase of authorized, 563.
- part may be invested in real estate in Dorchester, 563.
- may purchase and hold real estate, 560.
- franchise, when and how may be purchased, 560, 562.
- route, grade, and gauge, how determined, 561.
- route may be altered, 561.
- streets crossed by, may be taken up, 561.
- to make annual returns, 561.
- charter limited to fifty years, 561.
- tracks may be discontinued, &c., 561, 562.
- act to be void, unless accepted, &c., 561, 562.
- when accepted by city council, 561, *note*, 562, *note*.
- charter may be altered, repealed, &c., 563.
- rates of fare limited, 562.
- may be used by Suffolk Railroad, 593.
- may use tracks of Suffolk, Middlesex, and Cambridge roads, 593.
- may construct tracks from near Winthrop House to Providence railroad depot, 594.
- and through Providence and Berkley streets, 594.
- may make agreements with Broadway and Suffolk railroads for mutual use of tracks, 594.
- or commissioners may be appointed by the court, 595.
- first location, 563, 564; conditions, 563.
- second location, 564; conditions, 564.
- third location, 565, 566; conditions, 565, 566.
- time of cars starting from Camden Street, &c., 565, 566.
- twenty-five tickets to be sold for one dollar, 566, 568.
- if road refuses to comply with order, tracks to be taken up, 566.
- fourth location, 566-569; conditions, 567-569.
- roadway of streets to be kept in repair, 567-569.
- roadway to include what, 569.
- street to be repaved at expense of, 567.
- other horse railroads may run cars over, 567.
- granite blocks to be laid inside and outside each rail, 568.
- form of rail used to be satisfactory, 568.
- to pay \$4,000 for widening Washington Street, near Milk Street, 568.
- twenty-eight tickets for a dollar, between Camden Street and northern terminus of road, 568, *note*.

**METROPOLITAN RAILROAD (HORSE),** (*Continued.*)

- fifth location, 569-571 ; conditions, 569-571.
  - roadway to be kept in repair, &c., 570, 571.
  - to make correct return to aldermen of number of cars used and run, 570.
  - to pay one dollar for each car for each six months, 570.
  - company to acquire no rights by paying such sum, 571.
- sixth location, 571, 572 ; conditions, 571, 572.
  - may run over certain tracks of Suffolk railroad, 571, 572.
- seventh location, 572, 573 ; conditions, 572, 573.
  - may run cars to stations of steam roads on Causeway and Haverhill streets, 572.
  - may run to Chelsea Ferry, with consent of Suffolk road, 572, 573.
  - not to charge over five cents for single fare on this route, 573.
- eighth location, 573-575 ; conditions, 573-575.
  - curved track in Tremont Street, near Camden, to be paved, &c., by, 573, 574.
  - portions of Washington Street, near Dover, to be kept in repair, 574.

**MIDDLESEX RAILROAD (HORSE),** acts incorporating, 575-581.

- location, tracks to be laid as aldermen direct, 576, 577.
  - how extended, &c., 581.
- rates of fare for passengers, 576.
- notice to abutters, and how given, 577.
- when and how location may be revoked, 577.
- location over Charles River and Warren bridges, how determined, 577.
- franchise, &c., may be purchased, 578.
- to be operated by horse power only, 579.
- aldermen may regulate speed and mode of use of track, 579.
- parts of streets and bridges to be kept in repair by, 579.
- liability of for damages from defects in, &c., 579.
- penalty for obstructing track, &c., of, 579.
- penalty upon corporation for obstructing streets, 579.
- capital stock, amount, shares, &c., 580, 581.
- may purchase and hold real estate, 580.
- grade, gauge, &c., of road, 580.
- streets crossed by may be taken up, &c., 580.
- to make certain returns, 580, 581.

**MIDDLESEX RAILROAD (HORSE),** (*Continued.*)

- charter, duration, alteration, repeal of, 581.
- act void unless accepted, &c., 580; accepted, 580, *note*.
- first location, 581, 582; conditions, 581, 582.
- pattern of rail, 582; may use Dorchester Avenue rail, 582, *note*.
- second location, 582; conditions, 582.
- third location, 582-584; conditions, 582-584.
- roadway to be kept in order, repaved, &c., 583.
- roadway to include what, 584.
- any other horse railroad may run its cars over, 584.
- granite blocks to be laid inside and outside of each rail, 584.
- fourth location, 585, 586; conditions, 585, 586.
- any other road may run its cars over, 585.
- fifth location, 831-833; conditions, 831-833.

**MILITARY PARADE,** horses may be ridden on common, on occasion of, 120.

firearms may be discharged, on occasion of, 227.

**MILITIA,** to be ordered out, in case of riots, 628. See *Riots*.**MILK,** inspector of, how appointed, &c., 409.

- notice of appointment to be given, 409.
- office to be kept, &c., 409.
- measures for sale of to be sealed, 409, 410.
- penalty for selling in unsealed measures, 410.
- for neglecting to record name, 410.
- for selling adulterated milk, 410.
- for offering for sale milk from cows fed upon refuse of distilleries, 410.
- names of persons convicted of selling adulterated milk to be published, 410.

**MINOR,** not to drive carriage unless specially licensed, 101.

- may be sent to House of Reformation in certain cases, 377, 379.
- sale of fruit, newspapers, &c., by, may be restrained, 278.
- in prisons, to be kept separate from notorious offenders and convicts, 351.
- provisions respecting binding out as apprentices, 378, 453-457.
- may be received into, or sentenced to, House of Reformation, 377, 379.
- employment and instruction therein, 378; discharge therefrom, 378.
- transfer from House of Correction, 369.

See *Apprentices*, *House of Industry*, and *House of Reformation*.

MINOT'S LEDGE, 241.

MONEYS. See *Finance and Public Moneys*.

MORTAR, 230. See *Firearms*.

MORTGAGES, may be discharged by mayor, 144.

for public lands, to be deposited with treasurer, 483.

may be released in part on payment, &c., 483,

MOUNT HOPE CEMETERY, authority to establish, 411.

history of, 411, *note*.

trustees of, election, term of office, duties, vacancies, &c., 412.

two additional trustees to be elected, 413.

trustees to set apart free burial-places, 413.

to lay out and adorn cemetery, 413.

may make by-laws, 413.

may sell rights of burial, tombs, &c., 413.

proceeds of sales to be kept separate, 413.

may hold bequests and grants, 414.

to report to city council annually, 418.

to give proprietors of lots making grants, &c., for repair, &c., of

lots, obligations to keep them in repair, &c., 414.

bequests, &c., to, how invested, 414.

income of, how applied, 414.

city responsible for good faith of the trustees, 414.

city registrar to be secretary of trustees, 415.

duty of as such secretary, 415.

form of deed for conveyance of lots, 415.

restrictions, conditions, and privileges thereof, 415-417.

deeds of lots to be signed by chairman, 417.

to be recorded by city registrar, 418.

MUNICIPAL OFFICERS, when elected, 3.

NATICK, inhabitants of, may use water of Long Pond for certain purposes, 790.

NEWSPAPERS, sale of, by minors may be restrained, 278.

ordinances, &c., to be published in certain, 427.

NIGHT-WALKERS, may be sent to the House of Correction, 345, 347.

NIX'S MATE, 241.

NOTES, for contracts for public lands to be deposited with treasurer, 483.

NOTICES AND PLACARDS, not to be posted on buildings without consent, 418.

NUISANCE, right and duty of city to remove nuisances endangering health, 306, *note*.

wooden buildings, erected contrary to law, may be abated as, 91.

persons committing, on the common, may be removed, 120.

not to be committed on the common, 121.

any wharf or structure extended beyond harbor lines may be declared one, 244, *note*.

such erections may be abated, 247, 250, 255, 258, 262, 265, 267-269.

board of health to make regulations respecting, 290.

notice, how to be given, 290.

penalty for violation, 290.

to examine into and remove, 291.

how and by whom to be removed, 291.

manner of serving order to remove, 291.

if owner does not remove, to be removed at his expense, 291.

how such expense shall be recovered, 291.

may notify occupants of unfit dwelling-place to remove, 291.

mode of proceeding, 291, 292.

such places not to be again occupied without, &c., 292.

to be removed by order of court, at expense of party convicted of, 292.

superior court may issue injunctions, to stay or prevent, 292.

may make compulsory examination of premises, when refused, 292.

permits for removal of, or of infected articles, &c., 293.

caused by offensive trades, how regulated, 299, 300.

superintendent of health and assistants to enforce laws and regulations concerning, 307.

burnt and dangerous buildings may be adjudged nuisances and removed, 419, 420.

proceedings in such cases, 419, 420.

booths, &c., used for gambling, &c., near public shows, may be abated and removed, 420.

when steam-engine or furnace may be deemed to be, 680-683.

OATH, of warden, clerk and inspectors, 45.

of mayor, aldermen, and common council, and how administered, 12.

certificate of, to be recorded, 12; of city clerk, 13.

of clerk of common council, 15.

of weigher and inspector-in-chief of lighters and vessels, and assistants, 40, 41.

OATH, (*Continued.*)

- of clerk of police court, and his assistants, 137.
- of city auditor, 196.
- of secretary of board of engineers, 211.
- of measurers of upper leather, 392.
- of surveyor-general of lumber and his deputies, 403.
- of inspector of milk, 409.
- of police officers, 469.
- of city registrar, 623.

## OFFAL, not permitted to remain in Faneuil Hall market, 172.

- how to be kept, and removed, 319-323.

## OFFENSIVE TRADES, regulated, 299, 300.

## OFFICE HOURS, of treasurer, clerk, auditor, registrar, assessors, &amp;c., 422.

## OFFICERS, of city, appointments to be provided for by city council, 16.

- duties to be prescribed and compensation fixed by city council, 16.
- to be nominated by mayor, when appointed by mayor and aldermen, 421.
- may be confirmed or rejected by aldermen, 421.
- no member of board of aldermen, or common council shall be eligible to salaried office, 18.
- shall discharge duties, notwithstanding removal from ward, 11, 12.
- actions, &c., by, for use of city, where brought and how removed, 30.
- time, and mode of choosing certain, 421.
- provision as to time to be directory merely, 421.
- offices to be provided for, 422; office hours, 422.
- to attend to duties at other times, 423.

OMNIBUSES, regulated, 102, 103. See *Carriages*.

## ORDINANCES, power of city to make, 15, 424.

- what penalties may be annexed for breach thereof, 15, 425.
- in prosecutions for breach of, need not be set out, 31, 425.
- respecting weighing vessels, may be made, 40.
- prosecutions under, how may be discontinued, &c., 426.
- police court to have jurisdiction of offences against, 426.
- by-laws to be denominated ordinances, 426; enacting style of, 426.
- to be examined, enrolled, and recorded, 426, 427; how published, 427.
- finest to enure to use of city, except, &c., 426, 427.

ORDINANCES, (*Continued.*)

who shall be liable to penalties prescribed by, 720.  
 act forbidden by, to be done without license, may be licensed, 720.  
 those in this book declared to be the ordinances of the city, 827.  
 repealing and saving clauses, 827, 828. See *By-Laws*.

## OVERSEERS OF THE HOUSE OF CORRECTION, 343, 367, 368.

See *Directors for Public Institutions. House of Correction.*

## OVERSEERS OF THE POOR, how chosen, 21.

their powers and duties, 21, 22; decisions respecting same, 427, 428, *note*.

finer for erecting livery stables contrary to law to go to, 89.  
 fines, &c., for selling gunpowder contrary to law to be paid to, 236.  
 powers of in regard to dead bodies, 301, 302.  
 certain powers and duties of, given to directors of House of Industry, 373-375.

incorporation of, 428, 429; present duties of, 428, *note*.  
 money and estates, given, &c., for use of the poor, vested in, 429.  
 limitation of amount, 429; to have perpetual succession, 430.  
 to hold real estate not exceeding £ 500 by the year, 430.  
 to have common seal, 430; to make by-laws, 430.  
 validity of their acts, &c., 430.  
 incorporated, with others, as trustees of John Boylston's charitable donations, 430, 431.

bequest by John Boylston, vested in said corporation, 431.  
 powers and duties of said corporation, 431, 433.  
 to surrender indigent boys to Boston Asylum, 432.  
 may bind out poor persons, orphans, &c., 432.  
 board of auditors to examine accounts of, 433.  
 support and burial of indigent strangers, 436, 438.  
 to notify overseers of other towns, 437, 439; removal of paupers, 439.  
 may bind out minor children, 454; may prosecute for certain offences, 440.

to make returns, 440; penalty for not making returns, 442.  
 to make returns of children under fourteen, 442.  
 certificates in cases of state paupers to be made by, 446.  
 to make complaint for removal of foreign paupers, 446, 447.  
 to receive one moiety of penalties for obstructing streets, 702.

See *House of Industry, Paupers, Poor, and Trustees of John Boylston's Charitable Donations.*

OXEN, not to be fed in streets, 716; not to go at large in streets, 716.

- PAUPERS, foreign, provisions respecting, 445 ; they may be sent home, 447.
- certain penalties to be for use of the poor, 80, 199.
  - poor to be under care of directors of House of Industry, 301-308.
  - city shall support its poor, 436.
  - they shall be under care of overseers of the poor, 436.
  - overseers to have same powers as directors, &c., of workhouses, &c., 436.
  - town may erect almshouse, 436.
  - kindred of poor persons liable to support them, 436.
  - superior court may assess such kindred, 336.
    - may also assess for future expenses, 436.
    - costs in such proceedings, how taxed, 437.
  - court may order with whom pauper shall live, 437.
  - proceedings on complaint to superior court, 437.
  - other kindred may be summoned, 437.
  - court may make new orders from time to time, 437.
  - overseers to provide for immediate relief of strangers, 437.
  - of whom they may recover the expense, 437, 438.
    - remedy by statute and common law, 438, *note*.
  - when a recovery shall establish the fact of a settlement, 438.
  - towns removing a pauper within thirty days, to pay only \$ 1 per week, 438.
  - support and burial of indigent strangers, 438 ; remedy therefor, 438.
  - towns liable to their own inhabitants for relief furnished after notice, 439.
  - removal of paupers to place of settlement, 439.
    - proceedings in such case, 439.
    - effect of notification, &c., sent by mail, 439.
  - what minor children may be bound out by overseers, 454.
  - penalty for leaving paupers in towns to which they do not belong, 439.
  - overseers may prosecute and defend suits, &c., 440.
    - may take and sell effects of deceased pauper, &c., 440.
  - returns as to paupers to be made to secretary of state, 440-442.
  - penalty for not making returns, 442.
  - returns of children under fourteen, 442.
  - secretary to furnish blanks, 442.
    - to prepare abstract of returns, 443.

PAUPERS, (*Continued.*)

- coroner to bury what dead bodies, 443 ; expenses, 443.
- city may send state paupers to state almshouse at Tewksbury, 443.
- when such paupers may be sent to either state almshouse, 443.
- additional expense for greater distance to be paid by state, 443.
- sick state paupers may be sent to Rainsford Island, 444.
- who liable for their support, 444.
- dangerous lunatic state paupers not to be sent to state almshouse, 444.
- inmates of almshouses, when furiously mad, to be sent where, 444.
- proceedings in such case, 444.
- idiots having no settlement to be sent to state almshouse, 444.
- when state almshouses are full, city to take charge of state paupers, &c., 444.
- state to be liable until city is notified, 444.
- notice, how to be given, 444.
- city liable for support of its paupers in state almshouses, 445.
- if husband is state pauper, and wife has a legal settlement, he shall be supported in her place of settlement, 445.
- expense of such support to be paid by state, 445.
- discharged convict paupers, when to be removed to state almshouses, 445.
- expense, how to be borne, 445.
- if settlement is found in this state, to be removed there, 445.
- city not to be allowed for state paupers, except, &c., 446.
- accounts of county, for state paupers, how to be made up and audited, 446.
- when paupers may be sent out of state, 446.
- names of such persons removed, and the cost, to be stated in report, 446.
- foreign paupers may be carried where they belong, 446.
- state lunatic paupers may be sent home, 447.
- overseers of poor, when to perform duties of superintendent of alien passengers, 447.
- bastard children, proceedings concerning, 447-449.
- insane in state lunatic hospitals, commitment, support, and discharge of, 449-453.
- idiots in such hospitals, how may be discharged, 452.
- masters, apprentices, and servants, provisions concerning, 453-457.

PAUPERS, (*Continued.*)*Settlement of Paupers.*

- settlements, how acquired, 457-460.
- provision for persons who have begun to acquire settlements, 459.
- legal settlement to continue until new one is acquired, 459, 460.
- to keep a record of their transactions, 461.
- what entries to be made in books, 461.
- books to be open to inspection, 461.
- articles not to be received in pawn from minors, 461.
- articles taken in pawn to be exhibited, 461.

## PAWN-BROKERS, licenses of, 460, 461.

- license shall designate place of business, continuance of, 460, 461.
- penalty in certain cases, 460, 461.

## PEDLERS, not allowed in Faneuil Hall Market, 174.

- provisions of statutes respecting, 278-282. See *Hawkers and Pedlers.*

## PERAMBULATIONS, of boundary lines, 57-61; laws respecting, 57, 58.

PETTY CHAPMEN, 278-282. See *Hawkers and Pedlers.*

## PHYSICIANS, not liable for carriages standing in streets, 106.

- to board of health, appointment, salary, and fees, 290.
- in hospitals, duties of, 297, 298; duties of, in cases of infectious diseases, 298.
- consulting physicians, their appointment and duties, 313.
- city physician, 313-315; port physician, 315, 316.
- physician to jail, 314. See *Health.*

## PHYSIOLOGY, to be taught in public schools, 633.

PIERS. See *Wharves.*

## PILFERERS, 345.

## PIPE, lighted, forbidden in streets, barn, ropewalk, &amp;c., 207, 208.

## PIPERS AND FIDDLERS, to be committed to house of correction, 345.

## PLACARDS, not to be posted on buildings without consent, 418.

PLACES. See *Streets.*PLANK, 403, 404. See *Lumber.*

## PLANS, of streets to be in charge of engineer, 163.

- for grading of streets, drainage, water works, &c., how to express relative heights, &c., 659.

## PLATFORM, not to project into street, more than, &amp;c., 700.

- balances, 813. See *Weights and Measures.*

POLICE, administration of, to be in mayor and aldermen, 14.

POLICE COURT OF THE CITY OF BOSTON. See *Police Courts*.

justices, appointment, salary, 140.

clerks and assistant clerks, salaries, 131, 140.

terms of court for civil and criminal business, 140, 141.

different sessions may be held at the same time, 141.

jurisdiction, civil and criminal, 141.

justices may make rules, 141.

clerk to render quarterly account of criminal costs and fees, 141.

two special justices may be appointed, 141.

their tenure of office, powers, duties, pay, 141, 142.

POLICE COURTS, clerks of, to be elected, 137.

clerks of, may be removed for cause, 137.

may appoint assistants, and remove them, 137.

clerks and assistants to be sworn, bonds, duties, records, 137, 139.

justice and clerks not to act as counsel therein, 138.

terms and places of holding, 138.

certain expenses of, how audited and paid, 138.

complaints, process, adjournments, witnesses, 138.

finer and forfeitures to be paid over, 139.

fees and costs in criminal cases, how taxed, &c., 139.

county treasurer not to pay over costs, until accounts are rendered, 139.

POLICE OFFICERS, may remove offenders from common, 120.

duty of, in case of fire, 224.

duties of, in case of alarm or discovery of a fire, 224.

mayor and aldermen may appoint, 463, 465, 468.

decisions respecting, 465, *note*.

duties of board of aldermen in relation thereto, 465, 466.

policemen may demand aid in discharge of duty, 464.

penalty for refusal, 464 ; powers and duties of policemen, 463, 465, 468.

as watchmen to walk the rounds, to carry badge of office, 463.

to carry pike and staff, 463 ; expenses of, &c., how raised, 468.

board of aldermen may set the watch at such hour as they may deem expedient, 468.

may disperse any assembly of three or more persons, 463.

when on duty, may carry wooden clubs of a certain length, 463.

*Chief of Police*, how appointed, 468. See *Chief of Police*.

to be head of police, 469 ; his duties, 465, 469.

POLICE OFFICERS. *Chief of Police, (Continued.)*

- to give bonds, 469 ; to keep records, 469 ; compensation, 470.
- office of, to be open, &c., 470.
- to keep records of licenses for carriages, 98, 104.
- to make quarterly report of, and pay over money for same, 98, 104.
- notices of transfer of license to be given to, 98.
- copy of list of licensed dogs to be given to, 145.
- shall kill unlicensed dogs going at large, 146.
- to cause all dogs, at large, without collar, to be destroyed, 146.
- to pay over money to city treasurer, 199.
- to lay quarterly statement of money before city council, 200.
- to execute laws and ordinances respecting health, 307.
- deputy chiefs of, one or more appointed, 468.
- captains and lieutenants of, appointed, 468 ; duties of police, 468.
- police station-houses, kept open, 470.
- board of aldermen to make rules and regulations for police department, 471.
- police to perform duties of watchmen, 471.
- to prosecute persons for opening or disturbing sidewalks without permit, 722.
- may order persons standing in groups on sidewalk to move on, &c., 781.

## POOR.

- finer for unlawful keeping of gunpowder, when to go to, 236.
- one half of certain fines, &c., for obstructing streets, to go to, 702.
- for acting as porter without license, 472. See *Overseers of the Poor, Paupers.*

## PORCHES, on streets, regulated, 701, 713.

PORT PHYSICIAN, 315. See *Health.*

## PORTERS, for funerals, 311.

- porters to carry goods, &c., how licensed, 471, 472.
- prices how fixed, 472 ; to wear badge, 472.
- penalty for unlicensed persons acting as porters, 472.
- penalty for asking too much, 472, 473 ; for appearing without badge, 473.
- security to be given by porters, 473 ; they may be removed, 473.

## POUND-KEEPERS, duties of, 191-194.

## POUNDS, statute provisions respecting, 191-193.

## POSTS, not to be erected in streets, except, &amp;c., 701.

- PORTICOS, on streets, regulated, 701, 713.
- POWDER, 230-239. See *Gunpowder*.
- PRESIDENT OF COMMON COUNCIL, 8, 14, 22, 648, 820. See *Common Council*.
- PRINTING, joint standing committee on, 473.  
duties of, 473.
- PRISONERS, attacked with infectious disease, how removed, 295.  
such removal shall not be an escape, 295.  
provisions respecting confinement and discharge of, see *House of Correction and Jail*.
- PRIVIES, regulated, 316-319. See *Health*.
- PROBATE, Judge of, to be a member of board of accounts, 37, 130.  
to be one of the inspectors of prisons, 359.
- PROSECUTIONS, by and against the city, where brought, and how removed, 30, 141, 426.  
how much of special acts, by-laws, &c., it is necessary to set forth, 31, 425.  
under by-laws, &c., how may be discontinued, 125.  
fines, &c., under, to inure for benefit of city, 427.
- PROVISIONS, punishment for selling unwholesome, 304-306.  
damaged, not to be landed without permit, 323.
- PUBLIC BUILDINGS, to be under care of city council, 17, 474.  
may be sold or leased by city council, except, &c., 17, 474.  
of county, to belong to and be under care of city, 129, 475.  
committee on, to assign offices to city officers in, &c., 422.  
for county to be provided at expense of city, 129, 475.  
by mayor and aldermen, 475.  
leases for, to be signed by mayor, 476.  
if erection, alteration, or repair will exceed \$ 5,000, what proceedings to be had, 475.  
punishment for wilful injury to, 475, 476.  
proposals for building, to be sealed, 477.  
how opened, 477; not to be disclosed till contract is made, 477.  
proviso in case incompetent persons make proposals, 477.  
contracts, for buildings, &c., exceeding \$ 500, to be in writing, and signed by the mayor, 477.  
such contracts not to be altered, unless, &c., 477.  
expenditures not to exceed appropriations, 477.  
exceeding \$ 200 not to be made without vote of city council, 477.

PUBLIC BUILDINGS, (*Continued.*)

no building to be sold without an order of city council, 479.

*Joint Committee on*, to be appointed annually, 476.

to have care of schoolhouses, and other city buildings, 476.

to lease city buildings, 476 ; to prepare plans and specifications, 476.

to publish notice, 477.

purchases of land for erection of buildings, to be made under, 478.

*Superintendent of*, how chosen, 478 ; to give bond, 478.

to attend to delivery of fuel for city, 228.

condition of bond, 478.

to have care of schoolhouses and other buildings, 478.

to superintend repairs, &c., 478 ; to keep record, 479.

to report to city council, 479.

to make and deliver all bills for materials sold and work done, to city treasurer for collection, 479.

## PUBLIC GARDEN, history of, 115, 116.

city hall may be erected upon, 119.

nuisances, &c., not to be committed on, 120, 121.

not to be leased, &c., 481.

## PUBLIC LANDS, may be sold or leased by city council, 17.

how contracts, deeds, &c., shall be executed, 482.

plans to be filed, 482.

moneys, securities, &c., to be deposited with treasurer, 482, 483.

no conveyance to be delivered till purchase money is paid or secured, 483.

no expenditure to be made without sanction of city council, &c., 483.

common, &c., not to be sold, leased, &c., 17, 481, 482.

*Joint Committee on*, how chosen, 480.

to have care of public lands, 481.

subject to rules, &c., of city council, 481.

may lay out streets and squares in same, 481.

may lay out sewers in same, 481.

*Superintendent of*, how chosen, 481 ; to give bond, 481.

condition of bond, 481.

to devote himself to care of public lands, 481.

may contract to defray expense of improvement, by transfer of lands, 482.

to countersign all contracts, deeds, &c., 482.

**PUBLIC LANDS.** *Superintendent of, (Continued.)*

to make quarterly reports, 482.

to keep record of all vacant lands, 482.

*Board of Land Commissioners*, how appointed, 480.

to consist of one alderman and one member of the common council,  
480.

to hold office for two years, 481.

one to be chosen chairman, 483.

when may act, quorum, &c., 483.

to have care and sale of public lands, 481.

may lay out streets, squares, sewers, &c., 481.

superintendent of public lands to be secretary of, 482.

not to be interested in any contract, sale, or agreement concerning  
the public lands, 483.

**PUBLIC MONEYS**, city council may require bonds of persons collect-  
ing, keeping, and disbursing, 16.

accountability of boards and officers to city council for, 21.

annual statement to be published, 21.

not to be paid out unless, &c., 196, 197.

what shall be applied to city debt, 198.

statement of moneys received, expended, and to be raised, to be  
made to city council, 200.

for sale of public lands, to be paid to treasurer, 482, 483. See  
*Accounts, Auditor, Officers, and Treasurer.*

**PUBLIC PROPERTY**, to be under care of city council, 17, 474.

to be sold, leased, or purchased by city council, 17, 474.

annual statement of, to be published, 21, 200.

See *Public Buildings, Public Lands, and Water.*

**PUBLIC SQUARES**, 116-118. See *Common and Public Squares.*

**PUBLIC WELLS.** See *Pumps.*

**PUMPS**, to be provided for public wells, 819.

expense to be assessed on persons using the same, 819.

owner of estate assessed to pay within ten days, 819.

to be released in certain cases, 819.

proviso, 820; penalty for injuring, &c., 820.

**QUALIFICATIONS** of voters at municipal elections, 23, *note.*

members of city council not eligible to salaried office, 18.

inhabitants not disqualified to act as magistrates, jurors, appraisers,  
&c., in suits where city is interested, 30, 31.

QUARANTINE, powers of boards of health as to, vested in city council,  
17, 290, 296.

towns may establish, 296 ; two or more towns may establish, 296.

board of health may establish, 296.

regulations to extend to all, 296.

regulations to be binding on all, after public notice, 296.

vessels to be ordered to quarantine ground, 297.

penalty, 296, 297 ; expenses, how paid, 297.

to be at Deer Island, 315 ; port physician to superintend, 315.

QUORUM, of aldermen elect, not necessary to issue warrant, in case a  
full board is not elected, 8.

of common council to be twenty-five, 15.

of board of accounts, to be three or more, 37.

of directors of house of industry, to be a majority, 370.

RAILERS AND BRAWLERS, to be sent to House of Correction, 345.

RAILROADS (HORSE), to have their tracks of uniform gauge, 501,  
502.

not subject to statute provisions respecting steam railroads, except,  
&c., 498.

to make annual returns to assessors, of stockholders, &c., 498, *note*.

certain to be constructed within twelve months after location, 498.

location to be void, if road fails to commence construction in six  
months, 498.

to stop at crossings of steam roads, if at grade, 498.

penalty on driver and road for neglect, 498.

penalty for violating rules of aldermen, 498, 499.

corporation may apply to supreme court for commissioners to revise  
rules, 499.

report of commissioners, confirmed by court, to be final, 499.

when two connect, provision may be made for sale of tickets for  
passage over both roads, 499.

if corporations do not agree, commissioners to be appointed,  
&c., 499, 500.

compensation for use, &c., of one road by another, how determined,  
when corporations do not agree, 500, 501.

fees, costs, and expenses of commissioners, how allowed and paid,  
501.

*Rules and Regulations* of aldermen, 502-504.

printed copy of, to be kept in conspicuous position in each car, 504.

RAILROADS (HORSE). *Rules and Regulations, (Continued.)*

- speed at which cars may be drawn, 502.
- turning corners, horses to be driven at a walk, 502.
- cars driven in same direction not to approach nearer each other than three hundred feet, except, &c., 502.
  - driven in opposite directions, not to stop abreast of each other, 502.
  - not to stop at crossings, 502.
  - how to stop at intersection of two streets, 502, 503.
  - not to stop upon main track in Tremont Street more than, &c., unless, &c., 504.
  - not to stop on any main track longer than, &c., unless, &c., 504.
- conductors and drivers to keep watch for teams, carriages, passengers, &c., to avoid them, 503.
  - not to allow ladies or children to leave cars when in motion, 503.
  - rule as to other passengers, 503.
  - to announce names of streets and squares to passengers, 503.
- snow ploughs, use of, prohibited when, &c., 503.
- snow not to be removed without consent of superintendent of streets, and approval of committee on paving, 503.
- salt, &c., not to be used on tracks or rails, without permit, 503.
  - permit to be granted only in case, &c., 503.
- sleighs may be used where cars cannot run on tracks on account of snow, 503.

## RAILROADS (STEAM), stockholders to be registered, and returns

- made to assessors, 485, *note*, 740.
- corporations may take or purchase land, 485.
- location, width of road, materials, 485.
- land for depot and stations to be taxed, 485.
- land damages, how ascertained and paid, 485-487.
- within what time application must be made, 486.
- damages in Boston to be assessed by board of aldermen, 487.
- location, when may, and when may not be changed, 487, 488.
- embankments, drains, culverts, &c., to be built, 488.
- fences and barriers against cattle to be constructed, 488.
  - penalty for neglect so to do, 489.
- highway not to be obstructed, 489.
- to pass over or under highways, 489.

RAILROADS (STEAM), (*Continued.*)

- highways, how raised or lowered for such purpose, 489.
  - penalty for obstructing highways, neglecting bridges, &c., 489, 490.
  - supreme court may restrain road, 490.
  - aldermen may request corporation to raise or lower way, 490.
    - proceedings in such case, 490, 491.
  - course of highways may be altered, 491.
    - notice, damages, &c., 491.
  - ways may be laid out across railroads, 491, 492.
    - notice, construction of crossings, 491.
  - when way may be laid on level with railroad, 492.
  - crossings to be made easy and safe, 492.
  - bridges to be maintained and kept in repair, 492.
  - jurisdiction of questions touching obstructions to ways, 492.
  - drawbridges to be kept closed, except, &c., 496.
    - to be furnished with day and night signals, 496.
    - gates may be erected on each side, worked with mechanism, 496.
    - if gates not erected, trains to stop before reaching, 496, 497.
    - penalties for neglect, and how recovered, 497.
  - superintendent of drawbridges to be provided by corporations, 492.
    - to have full control and direction of vessels passing draw, 492, 493.
    - general duties of, 493.
  - bell to be attached to locomotive and rung, 493.
  - sign-boards at railroad crossings, &c., 493, 494.
  - gates to be erected, if aldermen think necessary, 494.
  - any two or more inhabitants may request corporation to erect gates, 495.
    - proceedings in case of refusal, 495.
    - gates at crossings may be altered, 496.
    - flagman at crossings, proceedings to procure, 495.
    - penalty on agents and flagmen for neglect of duty, 495.
- REGISTRAR, WATER, how chosen, and his duties, 796-808. See *Water.*
- REGISTRY AND RETURNS of births, marriages, and deaths, statute provisions concerning, 621, 624.
- city clerk (registrar) to receive, record, and index certain facts concerning births, marriages, and deaths, 621.
  - what persons to give notice of births and deaths, 621.
    - penalty for neglect, 621.

REGISTRY AND RETURNS, (*Continued.*)

- physician to furnish certain certificates as to deaths, 621, 622.
  - penalty for neglect, 622.
  - sextons, undertakers, &c., to make certain returns to city clerk, 622.
  - penalty for neglect, 622.
  - clerk (registrar) to give certificate, 622.
  - sextons, &c., to notify clerk when there is no such certificate, 622.
  - clerk (registrar) to transmit copies of records to secretary of state, 622.
  - record of clerk to be *primâ facie* evidence of facts recorded, 622.
  - fees of clerk, 622, 623.
  - superintendents of state almshouses to make returns of births, &c., 623.
  - secretary to furnish blank books, &c., 623.
  - to cause returns to be bound, &c., 623.
  - to make annual report to legislature, 623.
  - city may elect registrar, 623.
  - registrar to be sworn, 623.
  - all provisions concerning clerks to apply to him, 623.
  - secretary to prosecute to recover penalties, 624.
  - city may make regulations to enforce registration, 624.
  - City Registrar*, election, tenure of office, removal, 624.
    - vacancy in office of, how filled, 624.
    - duties, custody of books and records, 624.
    - to report annually to city council, 624.
    - may employ assistants, 624, 625.
    - compensation of registrar and assistants, 624.
  - pay of undertakers, 312, 625.
- REGISTRY OF DEEDS, not to be under charge of joint committee on public buildings, 478.
- register, election, pay, removal, &c., 132, 133.
  - making index of deeds part of county expenses, 135.
- RELIGIOUS INSTRUCTION, to be furnished to prisoners, 353.
- REMOVAL, from ward, during term of office, shall not disqualify, 11.
- of actions, &c., brought by the city, to another county, 30.
- REPRESENTATIVES.
- to general court, number of, 18, *note*.
  - elections of, how held, 24, 25.
  - new warrant, in case of non-election of, 26.
  - to congress, elections of, 25.

- RESERVOIRS, city may make and maintain, 784.  
 penalty for unlawfully using or injuring, 798. See *Water*.
- REWARDS, may be offered by the board of aldermen, for securing offenders, 625, 626.  
 not to exceed \$ 500, 626.  
 payment of, when there is more than one claimant, 626.  
 decisions respecting, 625, *note*.
- RIOTOUS CONDUCT, at ward meetings, how repressed and punished, 5, 777 ; at elections, 157.
- RIOTS, duties of certain officers, in case of, 626, 627.  
 such officers shall command persons unlawfully assembled to disperse, 626, 627.  
 may command assistance in arresting, &c., 627.  
 punishment for refusing assistance when commanded, 627.  
 to depart when required, 627.  
 for neglect of officer to exercise authority, 627.  
 officers may require aid to suppress and disperse, &c., 628.  
 armed force, when called out, shall obey orders of governor, judge, &c., 628.  
 officers to be held guiltless, though death be inflicted, 628.  
 persons unlawfully assembled to be answerable, &c., 628.  
 punishment for unlawfully destroying, &c., dwelling-houses, &c., 629.  
 cities, &c., to pay three fourths of value of property destroyed, 629.  
 provided the owner shall use reasonable diligence, 629.  
 city may recover amount so paid, 629.  
 active militia to be ordered out, in case of riots, 629.  
 proceedings in case of ordering out, &c., 629, 630.  
 form of requisition on commanding officer, 630.  
 fine for soldiers not obeying orders to appear, 630.  
 penalty on officers and soldiers for disobeying orders, 630.  
 troops to appear with arms and ammunition, 630.
- ROCKETS, not to be sold or set fire to without license, 209, 227, *note*.
- ROGUES, to be committed to house of correction, 345.
- ROPEWALK, lighted pipe, cigar, lamp, &c., forbidden in, unless, &c., 208.
- ROUTES, for railroads, established. See *Railroads (Horse)*, and *the Titles of the different Horse Railroads*.
- ROXBURY, boundary line, 49-53.  
 perambulation of boundary lines, 58-60.

ROXBURY, (*Continued.*)

city of Boston to erect and continue certain monuments, 51.

taxes not to be assessed on certain lands of, 52.

certain hydrants in, to be maintained by Boston, 793.

## RUNAWAYS, 345.

SAFETY PLUG, to be used in steam boilers, 682.

See *Steam Engines and Furnaces.*

SALES, of real estate for taxes, how advertised and made, 753-755.

collector may purchase for city, 759.

SALT, not to be put upon rails or tracks of horse railroads, 503.

SALT AND GRAIN, measures for, 406, 814, 815.

SAWING firewood on sidewalks, forbidden, 717.

SCALES. See *Weights and Measures.*

SCHOOL COMMITTEE, of whom to consist, 22, 23, 648.

how chosen, 22, 648.

vacancies in office of, how filled, 635.

penalty for refusing to elect school committee, 634.

to appoint a secretary and keep a permanent record-book, 635,  
648, 649.

shall have care and superintendence of public schools, 23, 648,  
649.

shall be inhabitants of ward, 22, 648.

to use their influence that youth shall attend school, 634.

to examine into qualifications of instructors, 635, 636.

to give certificate of same, 636.

to visit all the public schools, 636.

to direct what books shall be used, 636.

to require some portion of the Bible to be read daily in school, 636.

may supply school-books, &c., 636.

to furnish books at expense of towns, in case, &c., 637.

to give notice of same to assessors, 637.

price of such books to be added to tax, 637.

may be omitted, if parents are unable to pay, 637.

not to use books which favor any particular sect, 636.

to select and contract with teachers, 649; to keep records, 649.

to make returns to secretary of commonwealth, 641.

to certify number of scholars between 5 and 15 years of age, 640.

to make annual reports of the condition of schools, 641.

when report shall be made, and where deposited, 641.

SCHOOL COMMITTEE, (*Continued.*)

- annual report may be printed, 641.
- to state in returns the amount received from school fund, 641.
- to keep copy of abstract of returns, &c., 641, 642.
- the same to be the property of the town or city, 641.
- compensation of may be withheld in case of neglect, 642.
- where vacancies occur, the remaining members may make returns, 642.
- to receive and appropriate moneys forfeited by towns, 634.
- to elect school teachers, 23, 648, 649; to determine their salaries, 649.
- to remove instructors, 636, 648.
- to execute powers of school committees and selectmen of towns, 23, 648, 649.
- to apportion sum appropriated for salaries of instructors, 649.
- to present estimate of expenses to auditor, 649.
- to apportion salaries so as not to exceed such estimate, 649.
- to be judges of the wants of the public schools, 649.
- to be consulted on location and erection of schoolhouses, 649.
- to elect secretary, superintendent, &c., 23, 648, 649.
- failing to make returns, secretary to give notice, 641.
- to admit no child to public schools who has not been vaccinated, 644.
- signature of chairman and secretary to annual returns sufficient, 642.

## SCHOOL FUND, of what it shall consist, 647; how invested, 647.

- to be apportioned among towns, according to number of scholars, 647.

income received by towns, how applied, 648.

## SCHOOL INSTRUCTORS, to inculcate moral and religious principles, 633.

- qualifications of, to be examined, 635, 636; their duty, 642.
- not to be paid unless committee certify, 636.
- to be selected and contracted with by committee, 648, 649.
- may be dismissed by committee, 23, 636, 648, 649.
- not entitled to pay, until register is completed, 642.

## SCHOOL LIBRARIES, money may be raised for, 642.

## SCHOOL REGISTERS, how transmitted to clerk, and committee, 640.

- form of, to be prescribed by board of education, 640.
- to be faithfully kept, 641.
- teachers not entitled to pay, until register is completed, 642.

- SCHOOL RETURNS, board of education to prescribe form of, 640.  
 secretary to forward the same, 640.  
 school committee to return the same, 640, 641.  
 to state amount received from school fund, 641.  
 secretary of board of education to transmit abstracts of, 642.  
 when found informal, secretary to return same to committee, 641.  
 when delayed, may be received in the month of May, 641.  
 signature of chairman and secretary to returns when sufficient, 642.
- SCHOOLS, shall be under the care and superintendence of school committee, 23.  
 land at South Boston for schoolhouse, 53.  
 fuel for, how provided, 228.  
 what schools shall be provided by every town, 633.  
 what branches to be taught therein, 633.  
 what assistants in schools of 50 scholars, 634.  
 what by towns of 500 families or householders, 633.  
 additional school in towns of 500 families, 633.  
 in towns of 4000 inhabitants, 633.  
 schools for those over 15 years of age, 633.  
     how to be superintended and in what instructed, 634.  
 ministers, selectmen, &c., to use their influence, 634.  
 towns may raise money for schools, 634.  
 penalty for neglecting to raise money, 634.  
     how the penalty shall be appropriated, 643.  
 parents, masters, or guardians to supply school books, 637.  
 to be taxed for books supplied, in case, &c., 637.  
 such tax may be omitted, if parents are unable to pay, 637.  
 books and stationery may be furnished by towns and cities, 637.  
 provisions of General Statutes not to affect powers of corporations for supporting schools, 634.  
 Bible to be read in schools, 636.  
 sectarian books to be excluded, 636.  
 color, race, or religion not to be ground of exclusion from, 644.  
 remedy for exclusion of child from, 644.  
 provisions respecting truant children, 646, 769. See *School Committee, School Fund, School Instructors, School Libraries, School Registers, School Returns, and Truants.*
- SCHOOL STREET SQUARES, 117.
- SCRIP, 786-789. See *Water.*

- SEAL, of the city, 29.
- SEALERS OF WEIGHTS AND MEASURES, 809-818. See *Weights and Measures*.
- SEALS, city clerk to furnish to clerks of wards, 158.  
device, designation, &c., 158.
- SEARCH WARRANT, to search for gunpowder, 234.
- SECOND-HAND ARTICLES, dealers in, may be licensed, 650, 651.  
place of dealing to be designated in license, 651.  
license to contain conditions and restrictions, 651.  
penalty for dealing without license, 651, 652.  
keeper of shop to keep a book, 650, 651.  
to put up sign, &c., 651, 652.  
to keep open only at certain hours, 652.  
dealers in, not to trade with minor or apprentice, 652; penalty, 652.
- SECRETARY OF COMMONWEALTH, to provide self-sealing envelopes, 155. See *Registry and Returns*.
- SECRETARY OF THE BOARD OF EDUCATION to send school registers, &c., to the several towns and cities, 640.  
to make abstracts of school returns, 641.
- SECRETARY OF SCHOOL COMMITTEE, how chosen, 22, 648, 649.
- SEGAR, lighted, forbidden in streets, &c., ropewalk, barn, stables, &c., 208.
- SELECTMEN, duties of transferred to board of aldermen, 14.  
powers and duties of in relation to apprentices, 453-457.  
in relation to porters, 472, 473.  
railroad crossings, &c., 489-492.  
offering rewards, 625.  
suppressing riots, 626-630.  
schools, 638, 639.  
sewers, 654, 656.  
second-hand articles, 650.  
steam engines and furnaces, 680-683.  
the laying out of streets, 687.  
the appointment of sealers of weights and measures, 809.
- SENATORS, election of, 24.
- SERPENTS, fireworks not to be sold or set fire to without license, 209.
- SERVANTS, children and minors of what age may be bound as, 453.
- SEWERS, vaults may be connected with, 316, 664.  
superintendent to give permission, 316.  
waste water to be conveyed into, 319.

SEWERS, (*Continued.*)

- may be laid in public lands by joint committee, 481.
- board of aldermen to lay, maintain, repair, &c., 654.
- damages for land taken for, how ascertained, &c., 654.
- to be the property of the city, 654, 655.
- persons entering particular drains into, to pay proportional part of expense, 655.
- assessments for, to be a lien on real estate, 655.
- estate may be sold for payment, 655.
- any person aggrieved by assessment may appeal to superior court, 655.
- city, &c., may pay a part of the expense, 655.
- city of Boston to pay one quarter, 655.
- sewers to be laid near centre of street, 658.
- manner of construction, 656, 658, 661.
- drains entering into same, to be built as the board of aldermen direct, 656, 661.
- board of aldermen may cause owners of land to make drains, 660.
- shall make same, at owner's expense, in case of neglect, 660.
- rain water from roofs may be carried into, 660.
- penalty for entering drain into, without permit, 661.
- fee for permit, 661.
- board of aldermen to deduct one quarter of expense, 659.
- manner of assessment, and manner of collecting same, 659.
- assessments to be made for sewers heretofore constructed, 660.
- general provisions respecting, 654, *note*.
- when repaired, a fence and lights to be put up, 662.
- Superintendent of Sewers*, to be chosen, 658.
- to grant permits for entering drain into common sewers, 661.
- to have supervision of common sewers, 658.
- to ascertain dimensions, &c., 658; to keep same in a book, 659.
- to keep account of expenses, &c., 659.
- to report to the board of aldermen, 659.
- to enter assessments, in books, 659.
- to make out bills and deliver to treasurer, 659, 660.
- to render other services, 664.
- SEXTONS, to make returns of deaths, 622; compensation of, 622.
- SHADES AND AWNINGS regulated, 712.
- SHEEP, not to go at large in streets, 716.
- SHELL-FISH, act not to be construed to prevent taking of, 244.

- SHERBORN, inhabitants of, may use water of Long Pond for certain purposes, 790.
- SHERIFF, election, term of office, salary, 131.  
powers and duties of, in relation to jails, 340, 341.  
in relation to riots, 627-630.  
treasurer and collector may issue his warrant to, 757.  
duties of, as to collection of taxes, 757.  
See *Houses of Correction*, and *Jails*.
- SHIPS. See *Harbor*, and *Vessels*.
- SHOW-BILL or show-board, not to project into street, &c., 712.
- SHOWS, PUBLIC, 32.
- SICKNESS. See *Health*, *Infectious Diseases*, and *Nuisance*.
- SIDEWALKS, 698-700, 716-723. See *Streets*.  
no cart, coach, or other carriage to be driven on, 717.  
to be paved at owner's expense, 699.
- SIGNS, not to project into street more than one foot, 712.
- SLEDS, regulated, 103-109.  
coasting on, in streets, forbidden, 711. See *Carriages*.
- SLEIGHS, regulated, 96-109, 174.  
See *Carriages* and *Faneuil Hall Market*.
- SMALLPOX, 298.
- SMOKING, in Faneuil Hall Market, forbidden, 173.  
in streets, &c., ropewalks, barn, or stable, forbidden, 207, 208.
- SNOW to be removed from sidewalks by abutters, 718, 719.  
to be spread evenly when thrown into streets, 719. See *Sidewalks*.  
not to be removed from tracks of horse railroads, when, &c., 503.
- SNOWBALLS, not to be thrown in streets, 711.
- SNOW-PLOUGHS, not to be used on railroad tracks, when, &c., 503.
- SOAPSTONE, survey of may be regulated, 404.  
surveyors of, how appointed, &c., their duties, fees, &c., 405. See *Marble*.
- SOLE-LEATHER, 392. See *Leather*.
- SOLICITOR, for city to be chosen, 664; to be a resident citizen, 664.  
to be an attorney and counsellor, 664.  
not to hold any other office under city government, 664.  
to draw all legal instruments for city, 665.  
to commence and prosecute suits for city, 665.  
to defend suits against city or city officers, 665.  
to appear before legislature, and committees thereof, 665  
to furnish legal opinions, 665; salary, 666.

SOLICITOR, (*Continued.*)

expenses to be paid, 666 ; to retain taxable costs, 666.  
debts due the city to be put into hands of, for suit, 199, 309, 660,  
708.

prosecutions under by-laws, may be discontinued by, 426.

SOLITARY IMPRISONMENT, how executed, 351, 352.

SOUTH BOSTON, annexation of, 53, 56 ; boundaries of, 53, 56.

lots of land set apart for public use, 53 ; streets to be laid out in,  
54.

provisions respecting damages for land taken, 54.

decision respecting streets in, 54, *note*.

wooden buildings in, regulated, 91 ; fare for carriages to and in,  
101.

institutions at, excepted from ordinance respecting fuel, 228.

digging of graves at, 311.

land connected with public institutions at, not to be sold, leased,  
&c., 482.

included in ward number twelve, 776.

SOUTH BOSTON BRIDGES, 67-78. See *Bridges*.

SPECTACLE ISLAND, fire not to be built on, without, &c., 244.

SPIRITUOUS LIQUORS, 305, 354, 355.

SQUARES, to be under care and custody of the board of aldermen,  
120.

regulations respecting common and public squares, 17, 120-122,  
481.

See *Common* and *Streets*.

SQUIBS, not to be sold or set fire to, without license, 209.

STABLES, livery, not to be erected within 170 feet of any church,  
88, 89.

no person shall occupy or use any, except, &c., 89.

lighted pipe, cigar, lamps, &c., forbidden in, unless, &c., 208.

keepers of, not to wash horses or carriages in streets, 322.

not to permit manure to accumulate, 323.

of city, superintendent of health, to have care of, 309.

STAGE-COACHES, regulated, 97. See *Carriages*.

STATE AID, city may raise money to aid wife and children of volun-  
teers, 667.

money, how to be applied, 667.

aid to continue, how long, 668.

for widow and children of deceased volunteers, 668.

STATE AID, (*Continued.*)

- for wife and children of disabled volunteers, 668.
- limit to such aid, 668, 669.
- to whom not to be given, 670.
- children to include step-children, 669.
- city to be reimbursed from state, 669.
  - extent of such reimbursement, 669.
- city to report annually to state auditor, 669.
- may raise money to fulfil existing contracts, 670.
- not to make new contracts, 670.
- volunteers to have only regular army pay, 670.
- no pay to be allowed for drilling, 670.
- city may organize defence from attack by sea, 670.
- former acts of city as to bounties ratified, 670, 671.
- aid to wives, &c., of seamen, 671; how given, 671.
  - no reimbursement from state, 671.
- money remitted by volunteer to be received by state treasurer, 671, 672.
- duties of state and city treasurer in regard thereto, 671, 672.
- city not hereafter to raise money for bounty, except &c., 672, 673.
- soldiers receiving bounty not to be discharged on *habeas corpus*, unless they refund, 673.
- city may raise, &c., money to aid families of drafted men, 673.
- not to discharge from service persons drafted, 674.
- money not to be paid for such purpose, 674.
- penalty for so paying, 674.
- city clerk to make record of soldiers and officers of quota of city, 674, 675; record to contain what, 675.
- to make record of seamen, 675; contents of record, 675.
- adjutant-general to furnish blank books for record at cost, 676.
- city to pay expense of records and books, 676.
- reimbursement of city for money paid volunteers, 676.
  - proceedings therefor, 676.
- amount received for volunteers transferred to fill quota of any other city, to be paid to such city, 677.
- how city may elect to pay its portion of the tax, 677.

## STATE ALMSHOUSES, 443-447.

Superintendents of, 447. See *Paupers*.

STATE HOSPITAL on Rainsford Island, to be under care of mayor and aldermen, 242.

STATE HOSPITAL *on Rainsforth Island, (Continued.)*

duty of mayor and aldermen as to, 242.

title of state may be released to city, 243.

STATE LUNATIC HOSPITAL, removal of lunatics from, 335, 367, 451.

recovery of expenses incurred at, 335.

general provisions respecting, 449. See *Lunatics*.

STATE PAUPERS, 443-447. See *Paupers*.

## STAVES AND HOOPS.

cullers of to be chosen in maritime places, 678, 679.

quality and size of staves, 678.

length and size of hogshead hoops, 678, 679.

fees for culling, 679.

penalty for fraud in culling, 679.

STEAM BOILERS, 672-683. See *Steam Engines and Furnaces*.

STEAM ENGINES AND FURNACES, for melting iron, making

glass, planing, &c., not to be erected without license, 679, 680.

license to designate place, construction, &c., 680.

public notice to be given of applications for license, 680.

board of aldermen to prescribe rules, &c., for furnaces or engines previously in use, 680, 681.

if erected without license, to be deemed a common nuisance, 680, 681; may be abated and removed, 681.

proceedings on an application for a license, 680.

persons aggrieved by order of the board of aldermen, &c., may apply for a jury, 681.

an injunction may be issued, pending such application, 681.

verdict of jury, how found, returned, &c., 681; effect of verdict, 681.

damages and costs, how awarded, 681.

steam boiler not to be used, unless provided with fusible safety-plug, &c., 682, 683; penalty for removing such plug, 682.

penalty for using steam boiler without such safety-plug, 683.

act respecting steam engines, &c., accepted by city council, 683, *note*.

steam engines and boilers may be examined and use prohibited, if unsafe, 682.

may be abated and removed, 682; to have safety plugs, 682, 683.

stationary engines not to be used within five hundred feet of a dwelling-house, without license, 683.

license, how applied for, &c., 683.

if erected without license, to be deemed a nuisance, 683.

- STEELYARDS, allowed, if sealed, 813, 814. See *Weights and Measures*.
- STEPS, not to project into street, 700, 713.  
descending from street to be enclosed, &c., 713.
- STONES, not to be thrown in streets or on the common, 121, 122.
- STOVE-PIPE, penalty for setting on fire, 114.
- STRAW, stands for sale of, 284; weighing of, 282, 286. See *Hay*.
- STREETS, board of aldermen shall be surveyors of highways, 17, 703.  
board of aldermen to have power of county commissioners, 690.  
parties aggrieved in cases of laying out, widening, &c., may have trial by jury, 692-696.  
at South Boston, under act of annexation, 54, 56.  
no damages to be recovered for land taken for the same, 54.  
city not obliged to complete the same, sooner than, &c., 54.  
decisions respecting South Boston streets, 54, *note*.  
highway may be laid out over Mount Washington Bridge, 71, 72.  
over Eastern Avenue Corporation, 75.  
over Chelsea Point Bridge, 79.  
tide-waters between Pulling Point and Point Shirley, 79.  
Chelsea Street Bridge, 80.  
buildings, cellar doors, &c., near, regulated, 93, 700, 710, 711, 712-716. See *Buildings*.  
carriages in, regulated, 96-109. See *Carriages*.  
law of the road, 96.  
trees growing in, not to be injured, 118, 119; carpets not to be shaken in, 121.  
horses or cattle not to go at large in, 121.  
horses not to go faster than six miles an hour in, 107, 716.  
standing in, to sell meat, &c., forbidden, unless, &c., 174.  
carrying or kindling fire in, forbidden, unless, &c., 207.  
having lighted pipe or cigar in, forbidden, 207.  
bonfires in, forbidden, 227.  
removal of house offal, &c., in, regulated, 319, 320.  
fish not to be sold in certain streets, without, &c., 322.  
horses or carriages not to be washed in, 322.  
board of aldermen may set up lamps in, 390.  
may make rules respecting same, 391.  
penalty for destroying lamps, posts, railing, &c., in, 391.  
chief of police's duty as to obstructions, &c., in, 469.  
may be laid out in public lands, by joint committee, 481.

STREETS, (*Continued.*)

- provisions respecting railroad crossings, 489-492.
- sewers to be laid near centre of, 658.
- selectmen (board of aldermen) empowered to lay out or widen, 687.
- compensation for buildings removed, 687; for land taken, 687.
- selectmen (board of aldermen) empowered to discontinue, 688.
- previous orders, &c., of selectmen confirmed, 688.
- record of streets to be kept, 689.
- county commissioners authorized to lay out, &c., 689.
- board of aldermen to have like powers, 690.
- question, as to which provision their authority depends upon, 689,  
*note.*
- decisions respecting their powers, and proceedings, 689, *note.*
- decisions respecting damages for laying out, widening, &c., 690-  
692, *note.*
- powers of Middlesex commissioners in Suffolk, 692, 693.
- special provisions for laying out streets in Boston, 693.
- applications for laying out, how made, 691.
- party aggrieved may apply to court, for a jury, 692.
- applications to be made within what time, 692.
- trial in such cases, 692; jury may view the place, 692.
- aldermen to estimate expense of laying out, discontinuance, or  
alteration of, 693.
- if over \$ 5.000, common council to concur, 693.
- damages, how estimated, 693; set-off, 693.
- damages, where claimants have different interests, 693.
- how disposed of, 694.
- trustees to be appointed in certain cases, 694.
- petition may be brought by one of several parties, 694, 695.
- notice to be given to other parties interested to come in, 695.
- verdict to apportion damages, 695.
- to be conclusive on all having notice, 695.
- costs of petitioners, how taxed, 695.
- when person not liable for, 695, 696.
- person having notice and not appearing, to have claim barred, 696.
- laying out, &c., of street, to be void as against owner of land,  
unless land is taken within two years, or, 696.
- this not to apply to certain ways, 696.
- board of aldermen to mark angles and termini of ways, 696.
- penalty for neglect in so doing, 696.

STREETS, (*Continued.*)

- if location of street is uncertain, aldermen to ascertain and mark the same, 697.
- streets laid out over private lands to be graded by the owners, 697.
- not to be opened less than thirty feet wide, except, &c., 698.
- ways dedicated to public not to be chargeable upon city, unless laid out, &c., 697.
- entrance to such ways, when to be closed up, or notice given, 697.
- city liable for defects therein, unless notice is given, 697.
- abutters on such ways to grade streets and construct sidewalks, 697.
- grading street over private land, to be no acceptance of same, 698.
- paving of streets and sidewalks, 698, 699; of squares, 698.
- gutters, how to be laid, 698.
- regulation of width and height of sidewalks, 699.
  - acceptance and maintenance thereof, 699.
- owner to pave his sidewalk at own expense, 699.
- materials of pavement, 699.
- if owner neglects, sidewalks how paved, 699, 700.
- expense of, how recovered, 700.
- individuals may object to paving, 700.
- canopy, balcony, platform, or cellar door, not to project more than, &c., 700; penalty, 700.
- posts not to be erected, except, &c., 701.
- trees not to be set in, without leave, &c., 701.
- porticos, porches, and bow-windows, not to project into, &c., more than, &c., 701.
- signs, goods, &c., not to project into, more than one foot, 701.
  - penalty, 701.
- such goods may be removed by surveyors of highways, 701.
- owner to pay expense, 701.
- boxes, barrels, &c., not to be placed in, 701, 702; penalty, 702.
- finances and forfeitures, how distributed, 702.
- articles not to be raised from, on outside of any building, except, &c., 702.
  - not to be lowered on outside of any building adjoining, except, &c., 702.
  - penalty, 702.
- streets may be macadamized, 703.
- provisions respecting paving shall apply, 703.

STREETS, (*Continued.*)

- Gas Company may open, to sink pipes, &c., 703.
- shall repair the same again, 703.
- street in continuation of Broad Street to be laid out, 703, 704.
- in continuation of Commercial Street, 704; of Front Street, 704; of Clinton Street, 705; of Charles Street, 705.
- compensation for damages thereby, 704.
- incorporation for street from Rainsford's Lane to bridge, 704, *note*.
- streets on the Back Bay, 705, 706.
- commissioners to have control of streets, &c., 706.
- may offer them for acceptance by the city, 706.
- may modify agreements respecting streets and drainage in, 706.
- may make and discontinue streets, 706.
- to give notice before proceeding to act, 706.
- not to be obstructed by railroads, 489.
- to retain their names until altered by board of aldermen, 707.
- persons digging up, to repair the same, 709.
- penalty for digging up without license, 709, *note*.
- when drain or aqueduct is repaired, a fence and lights to be put up, 709.
- notice to be given of intention to build, 92, 710.
- portion of street to be allotted for that purpose, 710.
- portion so allotted to be enclosed and lighted, 710.
- not to be used more than thirty days, 710.
- placing coal or firewood in, regulated, 710.
- playing at football in, forbidden, 711.
- throwing stones and snowballs in, forbidden, 711.
- shooting with bow and arrow, forbidden, 711.
- exposing gaming tables in, forbidden, 711.
- coursing or coasting upon sleds in, forbidden, 711.
- bathing in waters adjacent to, forbidden, 711.
- taking street dirt without license, forbidden, 711.
- obstructing streets by moving buildings, forbidden, 711.
- suspending goods so as to project into, 711, 712.
- awnings and shades permitted, under regulations, 712.
- projecting signs and lanterns, regulated, 712.
- ringing bells and blowing horns, to give notice of business, forbidden, unless, &c., 712, 713.
- standing to grind cutlery in, forbidden, unless, &c., 713.
- projecting porches, windows, steps, &c., forbidden, 713.

STREETS, (*Continued.*)

- gratings in, how licensed and constructed, 713, 715.
- cellar doors and cellar doorways regulated, 713.
- steps descending from street, to be protected and lighted, 713, 714.
  - penalty for violation, 720.
- excavations and apertures in street, not to be made without license or permit, 714, 720.
- applications for license or permit to state what, 714, 722.
- license to provide what, 714; may be revoked, 714.
- excavation not to extend under street more than, &c., 714.
- coverings of coal-holes and apertures, how to be made, 714, 715, 721.
  - when unsafe, how to be made secure, 715.
- coal-holes not to be left open, unless, &c., 715.
- coal-holes and gratings may be authorized, 715.
- gratings not to extend more than eighteen inches into street, 715.
- no signs to be inserted in sidewalks, unless, &c., 715.
- safe passage to be made around, &c., apertures, 715.
- who responsible for injuries, 715, 721.
- license for occupying highway to be shown, &c., 715.
- vacant lots abutting on street to be fenced, 716.
- when superintendent of streets may erect at owners expense, 716.
- feeding horses, &c., in, forbidden, 108, 716.
- rate of riding or driving in, prescribed, 107, 716.
- horses, kine, swine, &c., not to go at large, 716.
- to be watered only by person licensed, 716.
- license to continue only one year, 716.
- ice and snow thrown into street to be broken up, 719.
- meaning of word "street" in ordinance defined, 719.
- who shall be liable to penalties, 720.
- acts forbidden to be done without license, may be licensed, 720.
- may be dug up, when necessary for aqueduct, water works, &c., 782, 783.
- plans of, to be under charge of city engineer, 163.
- surveys, &c., to be made by city engineer, 163.
- Sidewalks*, to be one sixth of the width of the whole street, 698.
  - city council may empower surveyors of highways to regulate width and height of, 699, 716.
  - surveyors may be empowered to accept same, 699, 717.
  - city council may order same to be maintained by city, 699, 717.

STREETS. *Sidewalks, (Continued.)*

- owner of lot to pave sidewalk at his own expense, 699.
- how to be paved, 699 ; materials therefor, 699, 700.
- individuals may object to paving, 700.
- on streets opened by owners, to be constructed by owners, 697.
- otherwise by the board of aldermen, at the expense of owners, 697.
- such expense to be a lien, 698 ; provisos, 698.
- width and height of, how regulated, 699 ; acceptance of, 699.
- to be maintained by city, after acceptance, provided, &c., 699, 717.
- city clerk to keep record of acceptances of, 717.
- carriages on, forbidden, except, &c., 717.
- sawing firewood on, regulated, 717.
- standing in a group, to obstruct, 717.
- placing lumber, bales, &c., on, 718.
- proviso respecting goods to be sold at auction, 718.
- snow to be removed from by abutters, 718.
  - by-law to this effect decided to be valid, 719, *note*.
  - provision to extend to snow falling from building, 719.
  - when encumbered with ice, to be made safe, 719.
- Superintendent of Streets*, to be chosen, 707.
  - tenure of office and compensation, 707.
  - to give bond to be approved by aldermen, 707.
  - shall have no interest in any contract, &c., 707.
  - may appoint an assistant, 707 ; to attend at his office, 707.
  - to keep a record and books, 708 ; to make reports, 708.
  - to superintend streets, 708.
  - to attend to laying out, widening, repairs, &c., 708.
  - to make contracts therefor, 708.
  - to give notice of nuisances, obstructions, &c., 708.
  - city not responsible for his acts, unless, &c., 708.
  - to remove rubbish after building, in case, &c., 710.
  - duty of, as to materials, &c., sold, 708.
  - to make up pay-rolls, &c., 709.
  - to have such carts and horses as he may need, &c., 309.
- Surveyors of Highways*, shall be the board of aldermen, 17, 703.
  - may be authorized to regulate width and height of sidewalks, 699, 716.
  - to accept sidewalks, 699, 717.
  - to direct as to setting posts, trees, &c., 701.

STREETS. *Surveyors of Highways, (Continued.)*

may remove goods projecting into the street more than one foot,  
701.

proprietor to pay expense, 701.

to sue for penalties, 702; to receive one moiety of penalties, 702.

may order streets to be macadamized, 703.

to regulate width and height of sidewalks, 716, 717.

may accept the same, 717.

rights and duties of, not limited by street ordinance, 720. See  
*Railroads.*

STUBBORN CHILDREN, may be committed to House of Correction,  
345.

SUFFOLK RAILROAD (HORSE), acts incorporating, 587-596.

location, tracks to be laid as aldermen direct, 587, 588, 596.

tracks, when and how may be discontinued, 588, 596.

notice to abutters, when and how given, 588.

rates of fare for passengers, &c., 588.

horse power only to be used, 589.

aldermen may regulate speed and mode of use of tracks, 589.

to keep portions of streets in repair, 589.

liability of for damages from defects in, 589.

penalty on corporation for obstructing streets, 589.

penalty for obstructing cars, tracks, &c., 589.

may purchase and hold real estate, 589, 590

route and grade, how determined, altered, &c., 590.

streets, &c., crossed by, may be taken up, 590.

to make certain returns, 590.

charter, duration, alteration, &c., of, 591

capital stock, amount, shares, &c., 589, 591.

act void unless accepted, 590; accepted, 590, *note.*

franchise, property, &c., may be purchased, 590.

may be leased or transferred, 591.

may run cars over ferries, and lay tracks on boats, &c., 591.

pay therefor, how determined in case of dispute, 591.

extension of tracks of, authorized, 591, 592.

may enter upon and use tracks of Metropolitan road, 592.

pay for use, how determined, 592.

may carry passengers to depots, &c., 592, 593.

when may construct tracks south of Cornhill, 593, 594.

tracks of, may be used by Metropolitan road, 593.

SEFUOLK RAILROAD, HORSE, (*Continued.*)

- manner of use to be determined by mayor and aldermen, 593, 594.
- may construct certain tracks if Metropolitan road does not, 594, *note*, 614.
- tracks of, may be used by Broadway road, 594, 595.
- may make agreements with Broadway and Metropolitan, to use each other's tracks, 595.
- pay for such use, how determined, 595.
- failure to use location for one year to make location void, 596.
- if discontinued, streets to be put in good condition, 596.
  - in case of transfer capital may be increased, 596.
- first location, 596-599 ; conditions, 597-599.
  - roadway of certain streets to be kept in repair, 598, 599.
  - form of rails, granite blocks, &c., 598, 599.
  - aldermen to determine pay for use of other tracks, 599.
  - other roads may use the tracks of this road, 599.
- second location, 599, 600 ; conditions, 600.
- third location, 600-604 ; conditions, 601, 604.
  - to make returns of number of cars, and pay one dollar a car each six months, 601.
  - any other road may be permitted to run its cars over, 602.
  - portions of Causeway Street to be repaved, 602.
  - roadway of certain streets to be kept in repair, 602.
  - granite blocks to be used each side of rail, 603.
  - to pay Metropolitan and other roads for use of tracks, 603.
- fourth location, 604 ; conditions, 604.
- fifth location, 605-608 ; conditions, 606-608.
  - direction of cars for ferry route, 606.
  - for depot route, 606.
  - whole roadway in these streets to be kept in repair, repaved, &c., 606.
  - to pay other roads for use of tracks, 607.
  - other roads may be permitted to use its tracks, 607.
- sixth location, 608, 611 ; conditions, 609, 611.
  - Cambridge road may use certain tracks of, 609.
  - may use tracks of Cambridge road, 609.
  - shall receive checks of Cambridge road, 609.
  - if neglects to construct tracks, Cambridge road may have control thereof, 610.

SUFFOLK RAILROAD, HORSE, (*Continued.*)

sixth location, roadway, &c., to be kept in repair, 610.

to pay other roads for use of tracks, 611.

other roads may use its tracks, 611.

seventh location, 611-613; conditions, 612, 613.

eighth location, 614-617; conditions, 615-617.

ninth location, 830, 831; conditions, 830, 831.

## SUITS, by and against the city, where brought, and how removed, 30.

duty of city solicitor, as to, 665.

may discontinue prosecutions under by-laws, 426.

claims due the city, to be put in suit by, 199, 309, 660, 708.

## SUPERINTENDENTS, of bridges, 86, 87.

assistant superintendents of, 87. See *Bridges*.

of *alien passengers*, 447. See *Paupers*.

of *Faneuil Hall*, 163, 164. See *Faneuil Hall*.

of *Faneuil Hall Market*, 47, 168-175, 200. See *Faneuil Hall Market*.

of *fire alarms*, 225. See *Fire Alarms*.

of *health*, 47, 307-323. See *Health*.

of *public buildings*, 47, 228, 478. See *Fuel and Public Buildings*.

of *public lands*, 47, 481. See *Public Lands*.

of *quarantine hospital*, Deer Island, 315; of *schools*, 649. See *Schools*.

of *sewers*,

bond of, 47; election, &c., of, 658.

not to be paid commissions on contracts, 124, 125.

may permit vaults to be connected with common sewers, 316.

may approve drains for waste water, 319.

general powers and duties of, 658-664. See *Sewers*.

of *streets*,

bond, 47; election of, &c., 707.

not to be paid commissions on contracts, 124, 125.

duty of, as to horse railroads, 503, 513-617, 830.

general powers and duties, 707-721. See *Streets*.

## SURVEYOR-GENERAL OF LUMBER, how appointed, &amp;c., 403.

See *Lumber*.

## SURVEYORS OF HIGHWAYS, shall be the board of aldermen, 17,

703. See *Streets*.

SURVEYORS OF LUMBER, 403, 404. See *Lumber*.

## SURVEYS, &amp;c., to be made by city engineer, 163.

SWIMMING, so as to be exposed to view, forbidden, 711.

SWINE, not to be kept without license, 322.

not to go at large in streets, 716.

SWIVEL, 230. See *Firearms*.

TAR-KETTLES, regulated, 207. See *Fire*.

TAXES, may be laid and assessed by city council, for all purposes for which towns may lay and assess the same, 15, 16, 723-746.

also for county purposes, so long as other towns are not taxable therefor, 16, 743, 744.

same regulations of law to be observed, as in town taxes, 16, 744.

city council may provide for assessment and collection, 16, 744.

may elect assessors, &c., 16, 744, 745.

Thompson's Island exempted from, so long as, &c., 55.

for appropriations for schools, how raised, 634, 637.

TAXES, *Assessment of*.

poll tax, upon whom, when and where assessed, 725, 727.

what polls exempt from taxation, 726.

all property not exempted to be taxed, 725.

real estate, to include what, 725.

personal estate, to include what, 725.

what real and personal estate exempt from taxation, 726.

of what place person taxable, to be deemed resident, 727.

duty of assessor as to determining residence, 727.

real estate, where and to whom to be taxed, 727.

mortgagors to be deemed owners until, &c., 727.

when tenant may recover of landlord, taxes paid by him, 727.

real estate of person deceased may be assessed to heirs, 727.

one heir liable for whole, with right of contribution, 727, 728.

real estate of deceased, how taxed when title is in dispute, 728.

personal estate taxed where owner resides, 728.

except certain stock in trade, machinery, houses, &c., 728.

property of persons under guardianship, 728.

deposited to accumulate, 729.

of deceased persons, 729.

held as a ministerial fund, 729.

mortgaged to be deemed property of party in possession, 730.

trust property, 729.

partners to be taxed jointly for stock in trade, 730.

ships of copartnership to be assessed where owners reside, 730.

TAXES, *Assessment of.* (Continued.)

manner of assessing taxes, 730-746.

state treasurer to send warrant to assess state tax, 730.

county, district, and city taxes, 730.

penalty on assessors for neglecting to assess tax, 729.

in case of neglect, commissioners to appoint assessors, 730.

city liable for state or county tax not assessed, 730, 731.

keepers of taverns, and boarding-houses, and masters, &c., of dwelling-houses, to give names of persons taxable, 731.

penalty for giving false information, 731.

*Assessors* to notify inhabitants to bring in lists of taxable property, 731.

may verify lists by oath of party, 731.

to receive lists as true, unless, &c., 731.

penalty for agreeing to assessment upon limited amount, with a view to residence, &c., 731.

to make estimate when lists are not brought in, 732.

estimate to be conclusive, unless, &c., 732.

may include all taxes, &c., in one assessment, 732.

in Boston, city and county taxes may be assessed separately, 732.

Chelsea, North Chelsea, and Winthrop, not to be taxed, 732.

proportions to be assessed upon polls and property, 732.

five per cent. may be added, 732.

shall make cash valuation, 731.

copy of valuation to be deposited, &c., 732.

valuation to contain what, 732, 733.

valuation list to be sworn to by assessors, 733.

penalty on assessors for omitting to take oath, 734.

to commit tax lists to collectors, 734.

form of tax list for collectors, 733, 734.

form and contents of warrant, 734.

new warrant may issue if old one is lost, 734.

may make reasonable abatements, 734.

costs accruing before abatement to be paid, 734, 735.

no abatement to be made unless, &c., 735.

abatement to be applied for within six months, 735.

if tax is paid, abatement to be reimbursed, 735.

person whose tax is abated, to have certificate, 735.

to assess persons applying seven days before election, 735.

proceedings in such case, 735, 736.

TAXES, *Assessment of, (Continued.)*

- Assessors* to be responsible only for fidelity, 736.
  - pay of assessors, 736.
  - duty of assessors as to valuations and assessments, 737, 739.
  - books of, to contain what, 737, 738.
  - to fill up tables and send copy to secretary of state, 739.
  - penalty on assessors for neglect, 740.
  - duty of, as to additional returns from corporations, 742.
  - reassessment of invalid taxes, 736.
  - illegal assessments to be void only as to illegal excess, 736.
- Corporations* to make returns of stock, &c., 740-742.
  - and of certain real estate and machinery, 742.
  - certain companies to make returns of collateral, 741.
    - penalty for neglect or false return, 741.
    - for transfer to avoid taxation, 741.
  - interest may be charged on certain taxes, 743.
  - powers of city council in relation to the assessment of city and county taxes, 743.
  - decision of the courts in regard thereto, 743, *note*.
- Collection of, 748-768.*
  - collectors, constables, and others receiving warrants, to collect taxes, 748.
    - to complete collection, though term first expire, 748.
  - demand to be made before distraint, 748.
  - may be collected forthwith when the credit of person taxed is doubtful, 748, 749.
  - persons claiming abatement to do what, 749.
  - errors in names on lists not to defeat collection, 749.
  - collector, &c., may distrain and sell property, except, &c., 749.
  - distress, how long kept, how advertised and sold, 749.
    - sale may be adjourned once, 749.
  - shares in corporations, how seized and sold, 749, 750.
  - surplus to be returned to owner, 750.
  - persons neglecting to pay tax after, &c., may be imprisoned, 750.
    - proceedings in such cases, 750 ; discharge, 750, 751.
    - collectors when liable to pay such tax, 751.
  - collectors may demand aid when, &c, 751.
  - proceedings where persons remove from collector's district without paying, 751.
  - against executors and administrators, 751.

TAXES, *Collection of, (Continued.)*

- proceedings when persons are not owners of the real estate taxed to them, 751, 752.
- taxes to be a lien for two years, 751.
- resident mortgagee, when to be called upon for taxes, 752.
- proceedings when non-resident appoints an attorney, 752, 753.
- sales of real estate for taxes, proceedings, 753, 754, 759-761.
  - form of deed by collector, 754, 760 ; recording, 754.
- affidavit of collector, &c., to be evidence of demand, 753.
- redemption of real estate sold for taxes, 754, 755, 761.
  - duty of city treasurer in regard thereto, 755.
- mortgagees may pay taxes on mortgaged property, 756.
  - proceedings in such cases, 756.
- equity powers of supreme court over sales of real estate for taxes, 756.
- Sheriff*, proceedings when tax list is committed to, 757.
  - fees for collecting, 757.
- if treasurer is made collector, 757.
- collectors to exhibit accounts every two months, 757.
  - penalty for not doing, 757.
    - to be credited with abatements, &c., 757.
- deficiency in state or county tax, how supplied, 757, 758.
- remedy of town on collector's bonds, 758.
- collector may be removed if, &c., 758.
- tax list of deceased collector, how completed, 758.
- temporary collectors, 758.
- compensation of collectors, 759.
- taxes paid to collectors, how recovered back, 759.
- at tax sales, city may purchase, 759.
  - proceedings in such cases, 759-761.
- fees of collectors, 761, 762.
- taxes to have priority in distribution of insolvent estates, 762.
- city treasurer shall be collector, 762.
  - may appoint deputies or assistants, 762.
  - may collect taxes previously outstanding, 762, 763.
  - may issue his warrant for part, 763.
  - may issue his warrant to distrain, 763.
- deputy collectors to give bond, 763 ; their powers, 763, 764.
- tenor of treasurer's warrants, 763.
- proceedings in serving and returning the same, 763, 764.

TAXES. (*Continued.*)

- assessors to be chosen, 764, 767; their duties and compensation, 764.
- committee to nominate assistant assessors, 764, 768.
- assistant assessors to be chosen, 764, 768; their compensation, 765.
- assessors may be removed, 765; vacancies, how filled, 765.
- organization of assessors and assistant assessors, 765.
- assessors to choose chairman and secretary, 765.
- secretary to keep records of both boards, 765.
- to certify days of service of assessors and assistant assessors, 765.
- committee on assessors department, 765, 766.
- duties of assistant assessors, 766.
- chairman, or other assessor to remain at assessors' room, 766.
- abatements to be recorded, 766; reasons to be stated, 766.
- record to be laid before city council, 766.
- city clerk to inform assessors of abatements made by board of aldermen, 766.
- assessors to make out and deliver tax bills to treasurer, 766.
- treasurer to issue tax bills, 766.
- if not paid within thirty days, to issue summons, 766.
- if not paid in ten days thereafter, to issue warrant, 766, 767.
- alphabetical list of estates sold for taxes to be kept, 767.
- assessors may transfer taxes on real estate to the owner, 767.
- real estate to be assessed to the owner, 767.
- proviso as to assessing tenant or occupant, 767.
- as to rights of owners and tenants, 767.
- TEACHERS, 23, 633, 636, 642, 644, 648, 649. See *School Instructors*.
- TELEGRAPH HILL, purchased to erect a reservoir thereon, 117.
- public walk, contents, and enclosure, 117.
- THEATRICAL EXHIBITIONS, may be licensed by board of aldermen, 32.
- penalty for exhibition without license, 32.
- THOMPSON'S ISLAND, annexed to Boston, 54, 55.
- exempt from taxation so long as, 55.
- THROWING stones and snowballs in streets, &c., forbidden, 711.
- any offal or filth into streets, forbidden, 320.
- TIMBER, 403, 404. See *Lumber*.
- TOLLING OF BELLS at funerals, 311.
- TOMBS not to be opened from June to October, 312.

- TOWNS, powers of, as to raising money by taxes, 743.  
duties of, in relation to paupers, 436-457.
- TREASURER, how to be chosen, 17, 18; bond of, 46, 47, 133.  
not to pay bills for ballast, &c., unless, &c., 46.  
to have custody of bond of auditor, 48.  
chief of police to pay over fees for licenses to, 98, 104.  
constables' bond to be given to, 122, 123.  
suits on constables' bonds to be in name of, 123.  
to furnish copy of constable's bond to persons applying therefor, 123.  
not to make payments under certain contracts, unless, &c., 126.  
to be *ex officio* county treasurer, 18, 133.  
to pay criminal costs, taxed, allowed, and certified, 139, 141.  
to accept bond of clerk of justices' court, 137.  
moneys received by clerk of court to be paid over to, 139.  
superintendent of market, to be paid over to, 175.  
to keep separate account of money received from licenses for dogs, 145, 147.  
all officers to pay over all money to, as soon as received, 199, 758, 762.  
not to pay out moneys, unless vouched, approved, examined, drawn for, &c., 196, 197.  
to make up annual accounts to thirtieth of April, 198.  
to conform to orders of committee on city debt, 198.  
committee on city debt may lend to, 199.  
to put debts due city into the hands of solicitor, for suit, 199, 309, 660, 708.  
duty of city officers to pay over moneys to, 21, 199, 758, 762.  
accounts of, how kept, 200; how audited, 201.  
duty as to hawkers' and pedlers' licenses, 279, 280.  
duty of, in respect to Mount Hope Cemetery, 414, 417, 418.  
office hours of, 422, 423.  
to prosecute for fines and forfeitures and trespasses, 425.  
to be one of board of auditors to examine accounts of overseers of poor, 433.  
purchase money of public lands to be paid to, 482, 483.  
notes, bonds, mortgages, &c., to be deposited with, 483.  
to prosecute for neglect in sending children to school, 743.  
income of school fund, to be paid to, 647.  
duty of, as to forfeitures by towns for not raising money for schools, 634.

TREASURER. (*Continued.*)

to collect bill for common sewers, 659, 660; for streets, &c., 708, 709.

duty of, in respect to state aid for soldiers, 671, 676, 677.

to receive money paid for redemption of land sold for taxes, 755.

to be collector of taxes, 762; to appoint deputies and assistants, 762.

powers and duties of such deputies, &c., 762, 763.

to collect taxes previously outstanding, 762, 763.

to issue his warrant, &c., 763.

may distrain before time fixed, in certain cases, 763.

assessors to deliver tax bills to, before October first, 766.

to issue tax bills immediately, 766.

to issue summons, if not paid within thirty days, 766.

to issue warrant, if not paid within ten days after summons, 767.

mayor, treasurer, and auditor to be trustees of water fund, 788.

to sign water scrip, 787.

duties as to payment of bills of water board, 796.

water rent to be paid to, 797.

duty of, as to sealing of weights and measures, &c., 812, 818.

to prosecute for penalty as to wells and pumps, 819.

TREASURY, money not to be paid out of, unless vouched, examined, approved, drawn for, &c., 196, 197.

balances remaining in, to be applied to payment of city debt, 198.

certain penalties to be paid into, 216, 426, 427.

TREES, penalty for injuring in streets, squares, &c., 118, 119.

may be set out at public expense, &c., 119.

on the common, and in streets, &c., not to be injured, 120.

not to be planted in streets, without leave of surveyors of highways, 701.

TRUANTS, cities and towns required to make provisions respecting, 769, 770.

ordinance to be approved by the court, 770.

they may appoint three or more persons to make complaints, 769, *note*, 771.

may be sentenced to pay fine, 770.

to be placed in institution of instruction, &c., 770.

how discharged, 771.

fine not to exceed twenty dollars, 771.

house of reformation, &c., to be the institution provided, 771.

TRUCKS, regulated, 103–106. See *Carriages*.

TRUNK, not to be placed on sidewalk, to obstruct, &c., 718.

TRUSTEES OF JOHN BOYLSTON'S CHARITABLE DONATIONS.

incorporated, 430, 431 ; to have perpetual succession, 431.

bequests made by John Boylston, vested in, 431.

to conform to directions of Boylston's will, 431.

to hold real and personal estate, 431 ; limitation of amount, 431.

to have a common seal, 431, 432 ; to make by-laws, 432.

to choose officers, 432 ; validity of acts, &c., 432.

authorized to bind out poor persons, 432.

TRUSTEES OF PUBLIC LIBRARY.

of whom to consist, 396 ; when and how chosen, 396.

to organize by choice of officers, 396.

to have the care and control of the public library, 396.

to appoint superintendent, librarian, and subordinate officers, 397.

to report to city council, 396. See *Library*.

TRUSTEES OF WATER FUND, mayor, treasurer, and auditor, 788.

TURNPIKE. See *Railroads* and *Streets*.

UPPER LEATHER, 392. See *Leather*.

UNDERTAKERS, to be appointed, 310, 311.

their duties, 311 ; no other person to undertake funeral, 311.

their fees, 312, 625 ; to make returns in regard to deaths, 622.

penalty for neglect, 622 ; compensation for returns, 625.

UNION PARK, when laid out, &c., 118.

UNION RAILWAY COMPANY, (HORSE,) incorporated, 526, *note*.

may contract with Cambridge Railroad Company, 526, *note*.

capital stock, &c., 527, *note*.

UNITED STATES, to have concurrent jurisdiction of certain places,  
241, 242.

UNLAWFUL ASSEMBLIES, 626–630. See *Riots*.

VACCINATION, to be performed by city physician, 314.

certificate of, to be given, provided, &c., 314.

of all children before they are two years old, 295.

when persons must be revaccinated, 295.

to be enforced by aldermen, 295 ; penalty for neglect, 295.

expense how paid, &c., 295.

children must be vaccinated before they enter school, 644.

VAGABONDS, to be committed to House of Correction, 345.

- VAULTS, regulated, 316-319. See *Health*.
- VEGETABLES, not to be brought into city for sale, or sold, unless prepared, &c., 322.
- VEHICLES, regulated, 97-109. See *Carriages*.
- VENIRE, for jurors, 386.
- VESSELS, weighers of, to be appointed, 38, 40.  
provisions respecting weighing same, 38-43.  
where they shall anchor, 271; trim of, at wharves, 272, 274.  
penalties, 271, 274; regulation of warps and lines, 272, 273.  
authority of harbor master over, 273, 276.  
to keep an anchor watch, and light, 274.  
master and owners liable, 274.  
mooring, &c., of, to buoys, beacons, &c., prohibited, 275.  
nuisance, infected articles, &c., on board of, to be regulated by board of health, 297, 315, 323.  
to be subject to quarantine, 297.  
duties of masters, as to quarantine, 297.  
city physician to examine nuisances, &c., on board of, 313.  
having hides, &c., to be reported to city physician, 315.  
master of such vessel, to report same, 315.
- VICTUALLERS, to be licensed by the board of aldermen, 398-400.  
See *Licensed Houses*.
- VOTERS, qualifications of, 23, 150. See *Elections*.
- VOTING-LISTS, to be made out by the board of aldermen, 24.  
to be delivered to clerk of ward, 24.  
to be used by warden and inspectors, 24.  
no person to vote, unless his name is on the list, 24.  
where and how to be posted, &c., 778.
- WAGONS, regulated, 97-109, 170-175. See *Carriages* and *Faneuil Hall Market*.
- WARD MEETINGS, time of meeting to be appointed by the board of aldermen, 3, 4.  
how conducted, 4-6; for election of mayor, 6, 7.  
for election of aldermen, 8; of common council, 9.  
qualifications of voters at, 23.  
for choice of overseers of the poor, 21; of school committee, 22.  
of state and national officers, 24; ward officers, to attend at, 5, 6.  
warrants for, how issued, served, and returned, 160, 161.  
board of aldermen to fix the time for opening and closing the poll, except, &c., 161.

- WARDROOMS, use of, may be granted for holding meetings, 776, 777.  
    permit to be granted, 777; to state what, 777.  
        not to extend to adjournments, 777.  
    applications for use, to state what, 777.  
    applicants to pay expenses of opening, &c., room, 778.  
    notifications of meeting to state what, 777.  
    who not to act at such meetings, 777.  
        penalty for acting therein, 777.  
    when police officers to remove persons from the room, 777.  
    chief of police to be notified of such meetings, 778.  
        to detail sufficient police force, 778.  
        under whose orders police to act, 778.  
        to make complaints for violation hereof, 778.  
    list of voters to be placed in room, 778.  
        not to be removed, &c., 778; penalty, 778.  
    copy of ordinance to be placed in each ward room, 778.
- WARDS, city to be divided into, 3, 772.  
    city council may alter the division of, 3, *note*, 772.  
    ward officers, after such new division, 773.  
        to hold office until next annual meeting, 773.  
    removal from, during term of office, shall not disqualify officers,  
        11, 12.  
    land annexed from Roxbury to be part of ward eleven, 52.  
    land annexed from Brookline, to be part of ward six, 56.  
    new division of, 773; boundaries of, 773-776.
- WARDEN, how chosen, 4; term of office, 4.  
    shall be resident in the ward, 4; shall preside at meetings, 5.  
    shall have power to preserve order, 5, 6.  
    with inspectors shall receive, sort, count, and declare votes, 6.  
    shall be under oath, 4, 5.  
    may administer oath to clerk and inspectors, 5.  
    manner of declaring votes, 6, 8, 9, 10.  
    to certify record of votes, 4, 5, 6.  
    to sign certificate of election of common councilmen, 4, 9.  
    to use voting-lists, 24.
- WARRANT, for elections, when and by whom issued, 4, 7, 8, 11, 27,  
    160, 161.  
    form of and how served and returned, 27, 160, 161.  
    time of opening and closing the poll, to be inserted in, 161.
- WARREN BRIDGE, 82, 83.

WASHINGTON SQUARE, history, &c., of, 118.

known as Fort Hill, formerly Corn Hill, 118.

WATCH. See *Police*.

WATER, city may obtain, from Long Pond, in Natick, &c., 781.

may take and hold waters of Long Pond, &c., 781.

lands, &c., 782.

rejection of act of 1845 respecting, 781, *note*.

acceptance of act of 1846 respecting, 781, *note*.

city to file in registry of deeds, a description of lands, &c., taken, 782.

may construct aqueducts, dams, reservoirs, &c., 782.

may distribute water throughout the city, lay pipes, &c., 782.

may dig up highways, &c., when necessary, 783.

*Water Commissioners* to be appointed, 783.

to execute and direct the works, 783.

to be subject to ordinances, &c., 783.

term and tenure of office, 783; quorum of, 783.

to make reports in writing, 783.

their compensation, 784.

not to be reduced while in office, 784.

their powers to be exercised by city, after their office shall cease, 784.

city to be liable to pay damages for taking land, &c., 784.

application to court, in case of disagreement, 784.

court may appoint three freeholders to assess damages, 784.

effect of their award, 785.

parties may claim a trial by jury, if dissatisfied, 785.

effect of verdict, 785.

application not to be made, until the water is actually diverted, &c., 785.

city may commence proceedings in case, &c., 785.

effect of judgment, in such case, 786.

city may tender damages, &c., 786.

effect of such tender, &c., 786.

city council may issue water scrip, 786.

manner of disposing of same, 786, 787.

temporary loans may be made, and additional scrip issued, 787.

scrip for payment of interest, 787; but not after certain time, 787.

form of scrip, 787; record to be kept of the same, 787.

city council to regulate the price of water, 787, 788.

WATER. (*Continued.*)

- net surplus income from water rents, &c., to be applied to payment of principal and interest of scrip, 788.
- mayor, treasurer, and auditor to be trustees of the fund, 788.
- trustees to render account, 788.
- how price of water may be raised, if insufficient, 788.
- how reduced, if more than sufficient, 789.
- limit to reduction, 789; costs, upon such proceedings, 789.
- occupant and owner of tenement both liable for price of water, 789.
- action for use of water without consent of city, 790.
- inhabitants of Natick, &c., may use a portion of, 790.
- penalty for diverting or corrupting, 790
- city may purchase property of Aqueduct Corporation, 790.
- acts respecting Aqueduct Corporation, 790, *note*.
- may be conveyed to East Boston, 790, 791.
  - over or under tide-waters, 791.
- commissioner to be appointed by governor, to approve same, 791.
- control granted to the city restricted, 791.
- water pipes may be laid under bridges of Eastern Railroad Company, 791.
- vote to convey the water to East Boston, 791, *note*.
- aqueduct may be constructed from Brookline through Roxbury, 792.
  - lands may be taken and held, 792.
  - liable to taxation, 792.
- Brookline and Roxbury may prescribe where pipes may be laid and when streets shall be dug, 792, 793.
- city to put such streets, &c., in good condition, 793.
  - to pay all land damages, 793.
- hydrants, for fires, to be constructed in Brookline and Roxbury, 793.
  - number in each place, 793.
  - to be kept in repair by those places, 793.
- act, when accepted by city council, 793, *note*.
- Cochituate Water Board*, how chosen, 794.
  - their organization, 795; general powers, 795.
  - to appoint subordinate officers, 795; to make annual report, 795.
  - to transmit reports of city engineer and water registrar, 795.
  - to prepare schedule of water rates, 795.
  - may sell or lease property, 795

WATER. *Cochituate Water Board, (Continued.)*

deeds, leases, &c., how executed, 795.

bills to be drawn by president of, 796.

president to supervise water works, &c., 796.

president may be chosen *pro tempore*, in case of absence, &c., 796.

direction and control of officers, 796-798.

city engineer to report to, 796; water registrar to report to, 797.

no member to be interested in contract, &c., 125, 798.

hydrants not to be opened without license of, 798.

to have some power over the Boston Aqueduct as over water works, 800; may establish rates, 800.

to ascertain by meters, quantity of water used, 807.

to regulate water closets, 808.

*City Engineer*, to have charge of lake, aqueducts, &c., 796.

to perform services required by Cochituate Water Board, 796.

to make an annual report of condition of water works, 796.

hydrant not to be opened without license of, &c., 798.

report of, to be transmitted to city council, 795.

*Water Registrar*, how chosen, and tenure of office, 796.

to assess water rates, 796; to visit premises of takers, 796, 799.

rates for Jamacia Pond water, 800.

to make out bills, 796, 799; to exercise supervision, &c., 796.

to make annual report, 797; report to be sent to city council, 795, 797.

may make abatement, 797; to keep books, 797.

to perform other services, 797.

hydrants not to be opened without license of, &c., 798.

may enter premises of any water taker, &c., 796, 799.

water rent payable in advance, 797.

supply to be cut off in case of non-payment, 797.

not to be let on again, except, &c., 797; proviso, 797.

provisions to apply, where two or more parties take the water, &c., 797.

penalty for opening hydrant, &c., 798.

for opening any pipe, or reservoir, &c., 798.

for turning on or turning off the water, 798.

for injuring any other reservoir, &c., 798.

water not to be sold to parties out of the city, unless, &c., 798.

no charge to be made, if used only in case of fire, &c., 808.

WATER. (*Continued.*)

- regulations under which the water shall be taken, 798, 799.
- to be printed upon bills, for water rent, 799.
- water to be cut off, in case of violation, 799.
- payment may be declared forfeited, 799.
- takers to keep service-pipes in repair, 799.
- takers to prevent waste, 799; to use no concealment, 799.
- no alteration to be made, except, &c., 799.
- water not to be supplied to other parties, unless, &c., 799.
- use of hand hose restricted, 799, 800; examination of premises, 799.
- owners or occupants where there is unnecessary waste of water to be fined, 799, 800; water may be cut off, 800.
- when aqueduct is repaired in streets, a fence and lights to be put up, 709.

## WATER RATES, 801-807.

- for purposes not specified, how fixed, 807.
- for estates valued together, 807; may be determined by meters, 807.
- no charge when used only for fire, 808.

## WAYLAND, inhabitants of, may use water of Long Pond for certain purposes, 790.

WAYS. See *Streets*.

## WEIGHERS OF COAL, who are not sellers of coal, to be appointed, 823, 826.

- how sworn, removable, fees, 823, 826.
- certificate of, what to state, 826.

## WEIGHERS OF HAY, to pay over moneys to city treasurer, 199, 285.

- to lay quarterly statement before city council, 200.
- duties and fees, 282-286. See *Hay*.

WEIGHERS OF VESSELS, 38-46. See *Boats and Lighters*.

## WEIGHTS AND MEASURES.

- standards and seals to be kept by county and town treasurers, 812.
- what shall be the standards, 811.
- to be kept by state treasurer, 811; seals to be used, 813.
- standards to be furnished by commonwealth, 811, 812.
- county, city, and town treasurers to provide places for keeping the same, 812.
- they shall keep, &c., and replace when lost, 812.
- penalty for neglect, 812.

WEIGHTS AND MEASURES. (*Continued.*)

- county and city standards to be sealed once in ten years, 812.
- penalty, 812; vibrating steelyards allowed, 813.
- provisions respecting measures of salt and grain, 814, 815.
- "hundred weight" to be construed the net hundred, 814.
- public weighers, who shall be deemed, 814; their duties, 814.
- Sealers of Weights and Measures*, how appointed, 809, 817; how removable, 809, 816.
- each town sealer to have complete sets of standards, 810, 812.
- to keep a house or office, 809, 810.
- to give notice to persons using steelyards, weights and measures, to send them in to be sealed, 810, 813.
- to go to houses, stores, &c., of those who neglect, 810, 815.
- double fees and expenses, 810.
- penalty for refusal to have weights, &c., sealed, 810, 815.
- penalty for using same without sealing, 811, 814.
- for altering same, 811, 815; seals to be used by, 811.
- fees for sealing, 813; to give notice annually of time and place, 813.
- to seal all weights and measures, 810, 815.
- penalty for selling by weights, &c., not sealed, 814.
- buyer subject to same penalty as seller, 814.
- trying and sealing hayscales. 813; fees, 813.
- penalty for using hayscales, &c., not sealed, 813.
- accountable to towns for preservation of standards, 812.
- penalty for neglect, 813.
- two sealers to be appointed by city, 817.
- term of office, powers, duties, salary, bond, &c., 817.
- sealers to keep books provided by city, 817.
- and make records, 818.
- to collect and pay over fees quarterly, 818.
- shall not be agent for selling scales, &c., 818.
- city shall provide office for sealers, 818.
- and transportation for standards, 818.
- assistant sealers, when authorized, how appointed, &c., 818.
- WELLS, public, to be supplied with pumps, 819.
- how expenses of same shall be assessed, 819.
- WEST BOSTON BRIDGE, 82.
- WESTERN AVENUE, provisions concerning, 85, 86.
- WHARVES, may be erected by city at Federal Street Bridge, 70.
- penalty for injury to, 71.
- not to be within forty feet of other wharves, 71.

WHARVES, (*Continued.*)

- carrying or kindling fire on, forbidden, unless, &c., 207.
- not to be extended beyond harbor lines, 244, 246, 250, 255, 258, 262, 265.
- towards harbor lines, further than, &c., 246, 250, 255, 258, 265.
- penalty for illegally extending, 244, 246, 250, 255-271.
- illegally erected, may be abated as a nuisance, 244-271.
- trim of vessels at, 272, 274.
- damaged grain, &c., not to be landed on, without, &c., 323.
- raising or lowering articles, on outside of buildings adjoining, 702.
- bathing in waters adjacent to, so as to be exposed, 711.

## WINDOWS, not to project into street more than one foot, 701, 713.

- not to be constructed, projecting into street, 713.

## WINNISIMMET RAILROAD, (HORSE,) acts incorporating, 618, 619.

- location, rates of fare, 618.
- may run its cars over ferry, 618.
- may use tracks of other roads, 619.
- location, proviso, conditions, &c., 619, 620.

## WITNESSES may be summoned, and compelled to attend and testify

- before municipal authorities, committees, &c., 820.
- and produce books and papers, 820.
- who may administer oath to, 820, 821.
- fees of and penalties for default, 820.
- failing to attend, warrant may issue to bring in for contempt, 821.

## WOOD, not to remain in streets longer than, &amp;c., 710.

- not to be sawed on sidewalk, &c., 717.
- dimensions of cord wood, 822.
- penalty for selling wood not measured, 822; fees for measuring, 822.
- wood brought by water, how measured, 822.
- in Boston, city government may establish ordinances, &c., 822, 823.
- carters to have tickets, 822; penalties, 822.
- places to be assigned for measuring wood and bark, 825.
- penalty for standing in places not assigned, 825.
- measurers of wood and bark to be appointed, 825; fees, 825, 826.
- measurers of wood brought by water, 825.

## WOODEN BUILDINGS, regulations respecting, 89-91.

## WORCESTER SQUARE, when laid out, &amp;c., 118.

WORKHOUSES, paupers may be supported in, 436. See *House of Industry.*



